

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1107

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 77-1107

UNITED STATES OF AMERICA,

Appellee,

-v.-

WILLIAM H. CLEARY and

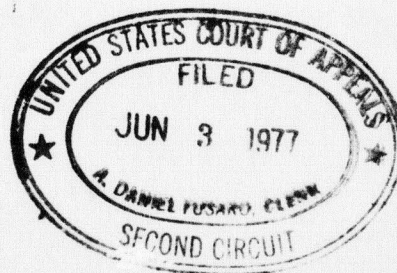
GUSTAVO PASSARELLI,

Defendants-Appellants.

APPENDIX OF DEFENDANT-APPELLANT

WILLIAM H. CLEARY

DANIEL H. MURPHY, II,
Attorney for Defendant-Appellant
William H. Cleary,
Office & P.O. Address:
Cowan, Liebowitz & Latman, P.C.,
200 East 42nd Street.
New York, New York 10017
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PAGINATION AS IN ORIGINAL COPY

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JUDGE/MAGISTRATE Assigned
MO 0208 1 0857
Mis ☐ Drop/Sentence
District Office

CLEARY, WILLIAM H.

Case Filed Mo 10 27
No. of Dets 03
76 0986 01
Yr Docket No Def

U.S. TITLE/SECTION
18:371
18:656
18:1014
18:1005

OFFENSES CHARGED
Conspiracy to commit bank fraud.
Misapplication of bank funds
Making false statements on loan application
Making false entry in bank records

ORIGINAL COUNTS
1
2-8,13-15
9-12
16

U.S. MAG. CASE NO.
BAIL - RELEASE
AMT ☐ Fugitive
Set ☐ Pers. Recog.
PSA
\$ 10 000 conditions
Date ☐ 10% Deposit
Bail Not Made ☐ Surety Bond
Status Changed (See Docket) ☐ Collateral
3rd Prty Cust Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began
High Risk Date
Summons Served
First Appearance

INDICTMENT ☒ Information 10-27-76
Indict Waived
In Charging District

ARRAIGNMENT 11-4-76
1st Plea 11-4-76
Final Plea

TRIAL
Trial Set For 1-10-77
Vair Dire ☒
Trial Began 1-10-77
Trial Ended 1-19-77

SUPERSEDING COUNTS

SENTENCE
Disposition of Charges 1-19-77
☒ Convicted
☐ Acquitted
☐ Dismissed
☐ On All Charges
☒ On Lesser Offenses
☐ WOP
☐ WP
☐ On Government Motion

MAGISTRATE

Search Warrant Issued
Summons Issued
Arrest Warrant Issued
COMPLAINT
OFFENSE (in Complaint)

DATE
INITIAL/NO.

INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled
Date Held
Tape Number

OUTCOME
☐ DISMISSED
HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.
Rick Weinberg
791-0006

ATTORNEYS
DANIEL H. MURPHY
200 E. 42nd Street
New York, New York 10017
Tel: 212-986-6272

Show last names and suffix numbers of other defendants on same indictment/information

Healy-02, Passarelli-03

DATE (DOCUMENT NO.) PROCEEDINGS

10-27-76 Filed Indictment.....Gagliardi, J.

11-4-76 Deft. (atty. Daniel H. Murphy) pleads not guilty. Bail fixed at \$10,000 unsecured PRB. Assigned to Carter, J. for all purposes.....Cooper, J.

11/9/76 Filed NOTICE OF APPEARANCE for deft; by Daniel H. Murphy of Cowan Liebowitz & Latman, 200 E. 42nd St. New York, N.Y. 10017 Tel: 212-986-6272.

11/11/76 Filed PRE-TRIAL CONFERENCE held. All motions are to be filed by 11/19/76. Another pretrial conference maybe scheduled if pre-trial matters can not be worked out. The case is set down for trial for 1/10/77 at 2:00 PM in courtroom 102. So ordered CARTER, J.

11-4-76 Fld appearance bond in the amount of \$10,000 unsecured

11-23-76 Filed Deft's MOTION to dismiss indictment and for Brady Material.

11-23-76 Filed Deft's MEMORANDUM in support of motion to dismiss indictment.

EXCLUDABLE DELAY (a) (b) (c) (d)

Continued on page 2

IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUDABLE DELAY		
DATE	(DOCUMENT NO.)	Interval Section 1 (a)	Start Date End Date (b)	Ln. Code (c)	T O (d)	
11-30-76	Filed GOV't's Affidavit in opposition to the deft's motion filed 11-23-76 .					
11-30-76	Filed Gov't's Memorandum of Law in opposition to the deft's pre-trial motions.					
12-20-76	Filed ORDER EXTENDING RAIL LIMITS, so ordered ..Carter, J.					
1-10-77	Filed VOIR DIRE requests of deft.					
1-10-77	Filed GOV'T'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS.					
1-10-77	Filed Defts Trial Memorandum.					
1-10-77	Filed Defts Voir Dire requests.					
1-11-77	Filed Memo-Endorsed on deft's motion filed 11-23-76 - Def't's motion denied. So ordered CARTER, J. m/n					
1-10-77	Deft and atty pres. Jury trial begins.					
1-11-77	Trial Cont'd					
1-12-77	" "					
1-13-77	" "					
1-17-77	" "					
1-18-77	" "					
1-19-77	" " and concluded. Jury verdict as follows: Guilty on Cts. 1,6,7,8 & 14. Pre-sentence report ordered. Sentences adj'd to 2-24-77 at 9:30 A.M. in courtroom 102. Bail is cont'd and bail limits are extended to the state of Maryland as to this deft. So ordered Carter, J.					
1-24-77	Filed MEMORANDUM OF LAW in support of motion for direct verdict of acquittal.					
1-27-77	Filed DEFT'S Post-Trial Memorandum.					
2-14-77	Filed Gov't's Post-Trial Memorandum of Law.					
2-15-77	Filed MEMO-ENDORSED on deft's motion for acquittal on cts. 1,6,7,8 & 14 for which he was found guilty. Motion denied. So ordered, Carter, J. m/n					
2-24-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft. is hereby committed to the custody of the Atty Gen, for impr. for a period of FIVE (5) YEARS, on counts 1,6,7,8 and 14, to run concurrently with each other. The execution of sentence is hereby suspended, and the deft. is placed on probation for a period of FIVE (5) YEARS, or for such a lesser period as to be determined by the probation deft. Special Condition of Probation being that the deft undergo psychiatric treatment and see it through to a conclusion. So ordered So ordered.....CARTER, J. All copies issued.					
3-2-77	Filed Notice of Appeal to the USCA by the deft. from the Judgement filed 2-24-77. U.S. Atty & deft m/n.					
3-23-77	Filed Motion for Judgment of Acquittal					
3-23-77	Filed Motion for Judgment of Acquittal					
3-23-77	Filed Motion for Judgment of Acquittal					
FINE AND RESTITUTION PAYMENTS						
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

176 CRIM. 0986

UNITED STATES OF AMERICA,

- v -

WILLIAM H. CLEARY,
JEROME F. HEALY, and
GUSTAVO PASSARELLI,

Defendants.

:

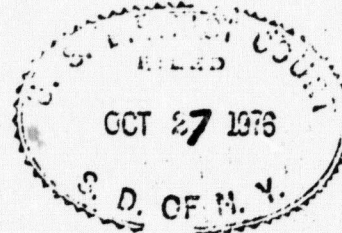
: INDICTMENT

: 76 Cr.

:

:

x



COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, Barclays Bank of New York (hereinafter referred to as "Barclays") was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.
2. At all times relevant to this Indictment, Barclays had a branch office located at 491 Main Street, New Rochelle, New York.
3. At all times relevant to this Indictment, WILLIAM H. CLEARY (hereinafter referred to as "CLEARY"), the defendant, was assistant manager of Barclays' branch office located at 491 Main Street, New Rochelle, New York.
4. At all times relevant to this Indictment, JEROME F. HEALY (hereinafter referred to as "HEALY"), was an attorney.
5. At all times relevant to this Indictment, GUSTAVO PASSARELLI (hereinafter referred to as "PASSARELLI"), was owner and president of Westchester Avenue Marina, Inc., Westchester Avenue Used Cars, Inc., and 8626 Realty Corporation.

MICROFILM

OCT 27 1976

3A

I. THE CONSPIRACY

6. From on or about September 1, 1975, up to and including the date of the filing of this Indictment, in the Southern District of New York, the defendants CLEARY, HEALY and PASSARELLI and others both known and unknown to the grand jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, to wit, violations of Title 18, United States Code, Sections 656 and 1014.

II. THE OBJECTS OF THE CONSPIRACY

7. It was part of said conspiracy that the defendants CLEARY, HEALY and PASSARELLI would and did use false statements, false signatures and other means to conceal from Barclays that the defendant PASSARELLI, who the defendants CLEARY, HEALY and PASSARELLI well knew had a bad credit rating at Barclays, was in fact the recipient of the proceeds of certain loans made by Barclays in the names of alleged borrowers other than the defendant PASSARELLI.

8. It was further part of said conspiracy that the defendants HEALY and PASSARELLI unlawfully, wilfully and knowingly would and did make false statements of material facts upon applications for loans, financial statements, notes and security agreements, for the purpose of influencing the action of Barclays upon applications, advances, loans, and changes and extensions of the same, and that the defendant CLEARY, being an officer and employee of Barclays, unlawfully, wilfully and knowingly would and did abstract and misapply the moneys, funds, and credits of Barclays, in amounts exceeding \$100.

9. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

(a) From on or about September 1, 1976, up to and including approximately January 31, 1976, the defendants HEALY and PASSARELLI, would and did apply for, and the defendant CLEARY would and did approve and authorize, loans from Barclays in the names of alleged borrowers other than the defendant PASSARELLI, the proceeds of which loans were to be received by the defendant PASSARELLI, when the defendants CLEARY, HEALY and PASSARELLI well knew that the defendant PASSARELLI had a bad credit rating at Barclays.

(b) The loans referred to in paragraph 9(a) of this Indictment would be and were made in the names of different alleged borrowers and would be and were each made in the amount of \$5000, which the defendants CLEARY, HEALY and PASSARELLI well knew was the maximum amount that the defendant CLEARY was authorized by Barclays to lend to any one customer without obtaining the approval of other officers at Barclays.

(c) The defendants HEALY and PASSARELLI would and did submit to the defendant CLEARY applications for loans, financial statements, notes and security agreements so that the loans referred to in paragraph 9(a) of this Indictment would appear to be regularly and properly made. The applications for loans, financial statements, notes and security agreements contained false statements of material facts or bore false signatures of the alleged borrowers. The defendant CLEARY did not verify the accuracy of said statements, and he never met the alleged borrowers before granting the loans.

(d) The defendant CLEARY would and did approve and authorize certain of the loans referred to in paragraph 9(a) of this Indictment without having received an application for a loan or a financial statement signed by the alleged borrower.

(e) The defendant CLEARY would and did give all Barclays bank money orders representing the proceeds of the loans referred to in paragraph 9(a) of this Indictment to the defendant HEALY, rather than to the alleged borrowers, and the defendant HEALY would and did give said bank money orders to the defendant PASSARELLI.

OVERT ACTS

10. The following overt acts, among others, were committed in the Southern District of New York in furtherance of said conspiracy:

(a) On or about September 26, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Mary Roccario.

(b) On or about September 26, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Mary Roccario.

(c) On or about October 22, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to 8626 Realty Corporation.

(d) On or about October 22, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to 8626 Realty Corporation.

CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Marina, Inc.

(f) On or about October 27, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Marina, Inc.

(g) On or about November 12, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Carl French.

(h) On or about November 12, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Carl French.

(i) On or about November 13, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Joseph Passarelli.

(j) On or about November 14, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Joseph Passarelli.

(k) On or about November 25, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Thomas Powers.

(l) On or about November 25, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Thomas Powers.

(m) On or about December 15, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Used Cars, Inc.

... gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Used Cars, Inc.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH EIGHT

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 2 through 8, in the Southern District of New York, WILLIAM H. CLEARY, the defendant, being then an officer and employee of the Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly abstract and misapply the moneys, funds and credits of said bank in amounts exceeding \$100, to wit, the amounts hereinafter set forth in each of Counts 2 through 8, by approving and authorizing the loans hereinafter described in Counts 2 through 8.

2. On or about the dates hereinafter set forth in Counts 2 through 8, in the Southern District of New York, JEROME F. HEALY and GUSTAVO PASSARELLI, the defendants, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure WILLIAM H. CLEARY, the defendant, to commit offenses against the United States set forth in the preceding paragraph and in Counts 2 through 8.

<u>COUNT</u>	<u>DATE</u>	<u>ALLEGED BORROWER</u>	<u>AMOUNTS ABSTRACTED AND MISAPPLIED</u>
2	September 26, 1975	Mary Roccario	\$5000
3	October 22, 1975	8626 Realty Corporation	\$5000
4	October 27, 1975	Westchester Avenue Marina, Inc.	\$5000
5	November 12, 1975	Carl French	\$5000
6	November 13, 1975	Guisseppi Passarelli	\$5000
7	November 25, 1975	Thomas Powers	\$5000
8	December 15, 1975	Westchester Avenue Used Cars, Inc.	\$5000

(Title 18, United States Code, Sections 656 and 2.)

COUNTS NINE THROUGH TWELVE

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 9 through 12, in the Southern District of New York, WILLIAM H. CLEARY, JEROME F. HEALY and GUSTAVO PASSARELLI, the defendants, unlawfully, wilfully and knowingly did make false statements of material facts upon applications for loans and financial statements for the purpose of influencing the action of Barclays Bank of New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications, advances, loans, and changes and extensions of the same.

<u>COUNT</u>	<u>DATE</u>	<u>NAME OF BORROWER ON LOAN APPLICATION OR FINANCIAL STATEMENT</u>	<u>AMOUNT OF LOAN</u>
9	September 26, 1975	Mary Roccario	\$5000
10	October 22, 1975	Carmine Liberatore	\$5000
11	November 12, 1975	Carl French	\$5000
12	November 25, 1975	Thomas Powers	\$5000

(Title 18, United States Code, Sections 1014 and 2.)

COUNTS THIRTEEN THROUGH FIFTEEN

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 13 through 15, in the Southern District of New York, WILLIAM H. CLEARY, the defendant, being then an officer and employee of the Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly abstract and misapply the moneys, funds and credits of said bank in amounts exceeding \$100, to wit, the amounts hereinafter set forth in each of Counts 13 through 15, by approving the loans hereinafter described in Counts 13 through 15.

2. On or about the dates hereinafter set forth in Counts 13 through 15, in the Southern District of New York, JEROME F. HEALY, the defendant, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure WILLIAM H. CLEARY, the defendant, to commit offenses against the United States set forth in the preceding paragraph and in Counts 13 through 15.

<u>COUNT</u>	<u>DATE</u>	<u>ALLEGED BORROWER</u>	<u>AMOUNT ABSTRACTED AND MISAPPLIED</u>
13	October 9, 1975	Jerome Healy	\$5000
14	December 9, 1975	Edward R. Hogan	\$5000
15	December 12, 1975	Margaret Fletcher	\$5000

(Title 18, United States Code, Sections 656 and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

1. On or about October 10, 1975, in the Southern District of New York, WILLIAM H. CLEARY (hereinafter referred to as "CLEARY"), the defendant, being an officer, agent and employee of Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, unlawfully, wilfully and knowingly, and with intent to injure and defraud said bank and to deceive officers of said bank, did make and cause to be made false entries in the books, reports and statements of said bank in that, when the Installment Loan Department of Barclays Bank of New York rejected an installment loan in the amount of \$5000 to JEROME F. HEALY (hereinafter referred to as "HEALY"), the defendant, the proceeds of which loan the defendant CLEARY had already given to the defendant HEALY, the defendant CLEARY changed said installment loan to a time loan and back-dated the note for the time loan to the date on which the defendant CLEARY had given the defendant HEALY the proceeds of said installment loan.

2. On or about October 10, 1975, in the Southern District of New York, the defendant HEALY did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure the defendant CLEARY to commit the offenses against the United States set forth in the preceding paragraph.

(Title 18, United States Code, Sections 1005 and 2.)

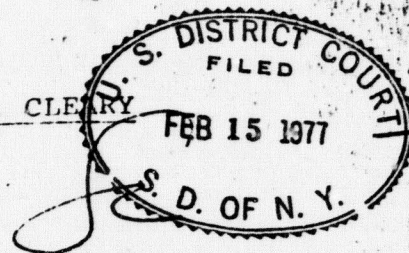
James M. Dick
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES OF AMERICA v. WILLIAM H. CLEARY

76 Cr. 986

ENDORSEMENT



After trial on an indictment naming defendant William Cleary in all 16 counts and Gustavo Passarelli in 12 counts, the jury returned a verdict of guilty against Cleary on Counts 1, 6, 7, 3 and 14 and a verdict of guilty against Passarelli on Counts 1, 3, 4, 5, 7, 8, 10 and 12. Cleary moves for a judgment of acquittal on all counts in which he was found guilty. Passarelli moves for a judgment of acquittal on Counts 3, 4 and 5. Cleary's motion is denied. Passarelli's motion is granted.

In evaluating the merits of a motion for a judgment of acquittal after trial and conviction, the appropriate issue the court must decide is "whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." United States v. Taylor, 464 F.2d 240, 243 (2d Cir. 1972), United States v. Carter, 552 F.2d 666, 680 (D.C. Cir. 1975). If there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. Applying the above standard to the evidence adduced at this trial, there is no question in my mind that there was ample evidence upon which a rational and fair minded jury could return, as it did, a verdict of guilty. Accordingly, Cleary's motion is denied.

Passarelli's motion, however, as the government concedes, must be granted. Passarelli is charged in Counts 3, 4 and 5 with aiding and abetting Cleary, a bank official, in violating Title 18, United States Code, Section 656. An aider and abettor cannot be convicted unless the principal is found guilty. United States v. Giordano, 489 F.2d 327, 330 (2d Cir. 1973). Since Cleary, the principal, was acquitted on those counts, Passarelli, as his aider and abettor, must be acquitted as well. Accordingly, a judgment of acquittal must be entered as to Passarelli on Counts 3, 4 and 5.

IT IS SO ORDERED.

Dated: New York, New York
February 14, 1977

FEB 15 1977

Robert L. Carter
ROBERT L. CARTER

13A

United States of America vs.

United States District Court

DEFENDANT

WILLIAM H. CLEARY

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.

76 Cr.986 R.L.C.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
2 24 77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

DANIEL H. MURPHY II

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY on counts 1,6,7,8,14.

Defendant has been convicted as charged of the offense(s) of conspiring to obtain loans from Barclay's Bank of New York by means of false statements by bank officer (Title 18, U.S. Code, Section 371. unlawfully, wilfully, and knowingly, abstracted and misapplied monies of said bank by bank officer by approving and authorizing loans in the amount of \$5000, when in fact they were not. (Title 18, U.S. Code, Section 656 & 2). Bank officer of Barclay's Bank of New York made false entries on bank records when the installment loan department had rejected an installment loan of \$5000, which was accomplished by changing the loan from an installment loan to a time loan. The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged, and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, on counts 1,6,7,8, and 14, to run concurrently with each other. The execution of sentence is hereby suspended, and the defendant is placed on probation for a period of FIVE (5) YEARS, or for such a lesser period as to be determined by the probation department.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

Special Condition of Probation being that the defendant undergo psychiatric treatment and see it through to a conclusion.

ADDITIONAL CONDITIONS OF PROBATION

OFFENSE CONTINUED
loan and then back dating the note to reflect the date the loan took place. (Title 18, United States Code, Section 1005 & 2)

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends:

MICROFILM

FEB 24 1977

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

ROBERT L. CARTER

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT
FILED
FEB 24 1977
S.D. OF N.Y.

Date February 24, 1977

14A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

field rev

UNITED STATES OF AMERICA

Docket Number 76 Cr. 986 RLC

-v.-

WILLIAM H. CLEARY et ano.,
Defendants.

Honorable Robert L. Carter
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that WILLIAM H. CLEARY appeals
the United States Court of Appeals for the Second Circuit from the Judgment Order other
(specify) _____ entered in this action on February 24, 1977
(Date)

March 2, 1977
Date February 24, 1977
To: United States Attorney
One St. Andrews Plaza
New York, New York 10007
Attn.: Richard Weinberg, AUSA
Phone Number 212-986-6272

[Signature]
(Counsel for Appellant)
Daniel H. Murphy, II
Cowan, Liebowitz & Latman, P.C.
200 East 42nd Street
New York, New York 10017

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

☒ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

Prepare transcript of
☐ Pre-trial proceedings
☒ Trial 1/10-13, 17-20/77
☒ Sentence 2/24/77
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

[Signature]
Daniel H. Murphy, II

DATE March 2, 1977
January 26, 1977

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL
17

15A

AFTERNOON SESSION

2:00 p.m.

(A jury was duly impaneled and sworn.)

MR. WEINBERG: May it please the Court, Mr. Murphy, Mr. Berger, Mrs. Williams, Ladies and Gentlemen of the Jury.

This case is about a scheme, a scheme in which these two defendants, along with another person, participated. A Scheme in which the defendants attempted and did succeed in obtaining loans from the Barclay's Bank of New York. They obtained these loans through the submission of false loan applications, loan applications which contained, in some cases, false information, in other cases loan applications which disguised the true borrower of the loan, loan applications which made it seem as if one person in fact was getting the proceeds of the loan when in fact and reality defendant Gustave Passarelli was getting the proceeds of the loan.

Because of the involvement of these defendants they are charged now with misapplication of bank funds and with submitting false bank loan applications.

As you have been told, my name is Richard Weinberg. I am Assistant United States Attorney in this District and it is going to be my obligation to present this case to

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2 you on behalf of the Government.

3 My opening statement, which will be short, is
4 simply designed to give you a brief outline of what the
5 evidence in this case is going to show. As Judge Carter
6 told you, and he will tell you again, the only real evidence
7 you are going to hear in this case is going to come from
8 the witness stand and from the exhibits which are offered
9 into evidence.

10 The evidence in this trial is going to show
11 that in the summer and fall of 1975 the defendant Gustavo
12 Passarelli was having serious problems. He owned a boat
13 marina in Westchester, New York. There was a mortgage on
14 that marina and Mr. Passarelli was deeply concerned that
15 the people who held the mortgage were going to foreclose
16 on his marina.

17 In other words, in the summer and fall of 1975
18 it was necessary for the defendant Gustavo Passarelli to
19 find money, to be able to borrow money so he could prevent
20 somebody from foreclosing on his marina.

21 Mr. Passarelli had a business associate, an
22 attorney, a man with whom he discussed his problems, this
23 particular financial problem. That gentleman is Jerome
24 Healy. Mr. Healy, who is named as a defendant in this case,
25 is not on trial before you now. Mr. Healy has already

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pleaded guilty to part of the indictment, and he is going to testify during this trial.

Mr. Healy is going to tell you about his involvement in the scheme and the involvement of Mr. Cleary and the involvement of Mr. Passarelli.

Sometime in the summer and fall of 1975 Mr. Passarelli asked Mr. Healy for help in getting some money. Mr. Healy told Mr. Passarelli that he knew somebody at Barclay's Bank of New York, an employee at the bank who was in a position to approve certain loans. The employee at the bank, that bank official, is Mr. Cleary.

The defendant Passarelli, however, told Mr. Healy, Mr. Passarelli was not in a good position to go into the Barclay's Bank, that the Barclay's Bank may well be reluctant to lend him money. So the defendant Passarelli, and Mr. Passarelli's attorney, Mr. Healy, decided that they would put in a loan application for money at that bank in the name of Mrs. Roccario, who is Mr. Passarelli's mother-in-law, who had a good credit rating at the Barclay's Bank.

Mr. Healy then went to the Barclay's bank to discuss this loan possibility with the defendant, the bank employee, William Cleary, a bank employee who had the authority to lend any one individual or corporation up to \$5,000 without getting the approval of any other bank

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official.

Mr. Healy told Mr. Cleary that he had a client, an associate, Gustavor Passarelli, who needed money for his business. Mr. Healy also told Mr. Cleary, the bank official, that Mr. Passarelli's credit was bad, that Mr. Passarelli may well have trouble getting a loan in his own name.

Mr. Cleary, the individual the bank puts trust in in approving loans, agreed to make a loan to Mr. Passarelli, although Mr. Cleary knew full well that the proceeds of that loan -- that the loan application was going to be in Mrs. Roccario's name, although all the loan proceeds were in fact going to go to Mr. Passarelli.

Mr. Cleary agreed to approve this \$5,000 loan. Mr. Cleary gave the necessary form to Mr. Healy, Mr. Healy went to Mr. Passarelli, and Mr. Passarelli and Mr. Healy filled out the forms in Mrs. Roccario's name, knowing full well that the loan proceeds were going to go to Mr. Passarelli, and not to Mrs. Roccario.

Mr. Cleary approved this loan. He approved the loan despite the fact that he knew the loan proceeds were going to go to Mr. Passarelli, and despite the fact that he never even met Mrs. Roccario or Mr. Passarelli.

It turned out, however, that the \$5,000 loan that Mr. Passarelli obtained was not sufficient. Mr.

Passarelli needed more money to save his business, to save his marina. Mr. Passarelli, Mr. Healy and Mr. Cleary, knew, however, that Mr. Cleary only had authority to loan up to \$5,000 to any one individual. Mr. Cleary could no longer approve another \$5,000 loan on his own in the name of Mrs. Roccario. And he couldn't approve any other \$5,000 loan in the name of Mr. Passarelli, the individual who needed the money.

So the evidence will show that over approximately a two and a half month period Mr. Cleary approved loans in the names of other people, knowing that all the money was going to go to Mr. Passarelli, an individual Mr. Cleary knew had a bad credit rating at the bank, who could not himself come into Barclay's Bank and get a loan.

Often Mr. Cleary gave the necessary forms to Mr. Healy, and Mr. Healy and Mr. Passarelli would fill out these forms. Mr. Healy would then submit these false loan applications to Mr. Cleary, and Mr. Cleary would approve these loans, knowing they are false, knowing that he had never met -- and this violated all bank procedure -- knowing that he had never met any of the people whose names are on the loan applications, knowing that in fact although the money was going to Mr. Passarelli, that he had never met Mr. Passarelli.

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2 You are also going to hear evidence in this case
3 concerning other loans that Mr. Cleary approved for friends
4 and associates of Mr. Healy. He approved these loans also
5 without meeting the true borrowers of the loans.

6 You are also going to hear evidence that in
7 October of 1975 Mr. Cleary approved a loan for Mr.
8 Healy. However, after he approved the loan and he submitted
9 the loan application he was notified by the bank officials
10 that Mr. Healy, the attorney, Mr. Healy, had a bad credit
11 rating, had a number of debts and therefore the bank would
12 not let the loan go through.

13 And even though Mr. Cleary knew that Mr. Healy,
14 the person who was arranging for these loans, had a bad
15 credit rating himself, during the rest of October, during
16 November of '75 and in November of '75, Mr. Cleary, the
17 person the bank puts trust and confidence in, still contin-
18 ued to loan money through Mr. Healy to Mr. Passarelli, who
19 he had never met, and he did it based on loan applica-
20 tions which he knew contained false information, loan
21 applications in the names of other people, knowing full
22 well that this money was going to go to Gustavo Passarelli.

23 You are going to learn about this case from a
24 number of witnesses and from the documents. You are going
25 to hear about this case from one of the people who was

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mainly responsible and who participated in this scheme,
Jerome Healy, who has pleaded guilty.

During the course of the trial and your deliberations you are going to have to judge Mr. Healy's credibility, remembering that Mr. Healy has pleaded guilty to a crime, and you are going to have to judge what motivations Mr. Healy has to tell the truth at this point. Because you will have to keep in mind that Mr. Healy is going to be testifying in this court under oath before the same Judge, Judge Carter, who at some later date is going to impose sentence on Mr. Healy.

You will also find that much, if not all, of Mr. Healy's testimony is going to be corroborated by the testimony of other witnesses and by documents, exhibits, which will be offered and which will be received into evidence.

The importance of any criminal case to both the Government and to the defendants is clear. Because of the importance of the case and although it will not be a long one, the Government will ask you to pay close attention to the testimony you hear and to the exhibits that are received in evidence.

All that the Government asks you to do is to listen with an open mind to the testimony and to deliberate

1 with an open mind. The Government simply asks you to give
2 a fair trial to both the Government and to the defendants.
3 And we are confident if you do that you will properly dis-
4 charge your obligations and your duties as jurors, and you
5 will return a fair and just verdict.
6

7 Thank you.

8 THE COURT: Mr. Murphy.

9 MR. MURPHY: Your Honor, counsel at the bar,
10 ladies and gentlemen of the jury.

11 My name is Daniel Murphy. I am the defense
12 counsel for William Cleary. My concern in this case is
13 only to defend Mr. Cleary. That is my job. I focus on
14 him and I focus only on the facts as they apply to him
15 and the charges as they are made against him. And I don't
16 talk about the other defendant in this case, and I'm not
17 concerned with the other defendant in this case.

18 You will be concerned, of course, with both
19 defendants, but when I am talking to you or I am asking
20 questions, or whatever, I am going to be concerned only
21 about Mr. Cleary, that defendant.

22 Mr. Cleary's contention in this case, made
23 through me, is that what the Government can't show and
24 that they are trying to show, is that he, as an Assistant
25 Manager of Barclay's Bank, made some loans, relying on

what he was told by what the Government has as their principal witness here, which loans turned out to be business mistakes.

That is what the Government, in essence, will prove and that's all they can prove. We on the defense of this will show that those loans, whether they were mistakes or not, were not made by Mr. Cleary in an attempt to injure the bank or to fraudulently take money from the bank.

They were made in good faith by a very young, shall we say a hotshot bank employee who was very busy doing a lot of work for the bank on all kinds of difficult subjects. As one of his responsibilities he approved loans. Everything that he had in his career was tied up with doing the best job he could for the bank.

The best the Government can show is that in exercising his duties he made errors. And we will contend that those errors did not amount to any deliberate intent by him to hurt the bank in any way. And we ask you to so find, after you have listened to all the evidence.

I want you to have in mind whether Mr. Cleary, who was acting as we will show he was acting, had in mind to hurt the bank or to fraudulently take money from the bank. If you find that he did, you will have to return a verdict against him. But we will contend that taking all

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of the evidence and listening to all sides, listening to focus on that point, whether that was an officer trying to do his best, you will find that it was, and you will acquit Mr. Cleary on all counts charged.

Thank you.

Thank you, your Honor.

MR. BERGER: The defendant Passarelli waives opening.

THE COURT: Ladies and gentlemen, we will adjourn.

One of the counsel has another engagement tomorrow morning, and normally we will meet at 10 o'clock, from ten to five.

But tomorrow instead of that, I am going to ask you to be here, we will start at 12:30. Have your lunch, and we will go from 12:30 to 5:00.

So that we will now adjourn until tomorrow at 12:30 when the evidence will begin. You will gather in this room.

(The jury left the room.)

(At 5:00 p.m. the proceedings were adjourned.)

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UNITED STATES OF AMERICA

vs.

76 Cr. 986

WILLIAM H. CLEARY, JEROME F.
HEALY and GUSTAVO PASSARELLI

January 11, 1977
12:40 a.m.

(Trial resumed, jury not present.)

MR. MURPHY: I would like to hand in the original of the memorandum and voir dire request. I served it on counsel yesterday morning and I forgot to hand it in and make it part of the record in this case.

THE COURT: I have the Government's requests, and I would like to have the requests from the defendants by tomorrow.

Bring in the jury.

(The jury enters the courtroom.)

THE COURT: All right, Mr. Weinberg, call your first witness.

MR. WEINBERG: The Government calls Edward Flanagan.

EDWARD C. FLANAGAN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

2 BY MR. WEINBERG:

3 Q Mr. Flanagan, let me ask you to make sure you
4 keep your voice up so all the members of the jury can hear
5 you.

6 Mr. Flanagan, Where are you employed?

7 A At Barclay's Bank of New York.

8 Q And how long have you been employed with the
9 bank?

10 A Twenty six years.

11 Q And what position do you hold with the bank
12 today?

13 A I am a Vice President and Senior Regional Loan
14 Officer.

15 Q Were you employed at another branch of the
16 Barclay's Bank in September of 1975?

17 A Yes.

18 Q And what branch were you employed at?

19 A 491 Main Street Branch in New Rochelle, New
20 York.

21 Q And what was your position at that branch?

22 A Vice President and Manager.

23 Q Do you know an individual named William Cleary?

24 A Yes.

25 Q Was Mr. Cleary employed at the branch that you

1 gwpdv Flanagan - direct

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2 managed in September of 1975?

3 A Yes, I was.

4 Q What position did Mr. Cleary hold with the bank
5 in September of 1975?

6 A He was assistant manager of the branch at 491
7 Main Street.

8 Q And did he hold that position through December
9 of 1975?

10 A Yes, he did.

11 Q Mr. Flanagan, during September through December
12 of 1975, did Mr. Cleary have a limit on the amount of a loan
13 he could approve without getting the approval of another
14 bank officer?

15 A Yes, he did.

16 Q And what was that limit?

17 A Five thousand dollars.

18 Q If he wanted to approve a loan in excess of
19 five thousand dollars, what would he have to do?

20 A He would have to present it to another loan
21 officer who had sufficient authority to approve it.

22 Q Under bank procedure, as you understood it in
23 the fall of 1975, if Mr. Cleary had a loan limitation of
24 five thousand dollars, could he, according to bank procedure,
25 approve more than one \$5,000 loan to the same individual?

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2 A No.

3 MR. MURPHY: Objection.

4 THE COURT: The question has been answered.

5 Q Mr. Flanagan, based on your experience at a bank
6 and based on your experience as the manager of that branch
7 in the fall of 1975, did it violate bank procedures to lend
8 money without talking to the person who was named as the
9 borrower on the bank application?

10 MR. MURPHY: Objection.

11 MR. WEINBERG: I think it is relevant and Mr.
12 Flanagan has personal knowledge of the facts.

13 THE COURT: I suppose the objection is that --
14 your first question ought to be what the procedures are and
15 allow him to tell us what they are. That way you can get
16 an answer to your question.

17 MR. WEINBERG: Thank you, your Honor.

18 THE COURT: This way he is giving an opinion,
19 and it may well be that the defendants may want to question
20 him about it. All they have is an opinion. So let him
21 tell us what the regulations are and you can ask him to
22 interpret them if it is not clear from what he states they
23 are.

24 Q Mr. Flanagan, if an individual wanted to borrow
25 money from Barclay's Bank in the fall of 1975, what

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Flanagan - direct

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2 procedure should he follow?

3 MR. MURPHY: Objection.

4 THE COURT: I am going to overrule the objection.

5 I don't know whether that reaches the question that I
6 thought Mr. Weinberg put, but he is doing it his own way.
7 I will overrule the objection. I don't see that any harm
8 will be done.

9 A May I have the question again?

10 Q Mr. Flanagan, let me try to rephrase the ques-
11 tion.

12 A JUROR: It is pretty drafty here.

13 THE COURT: Is the window open?

14 THE CLERK: It is closed.

15 (Pause)

16 THE COURT: Let's see how it works.

17 A JUROR: It is a little better now.

18 MR. MURPHY: Your Honor, as well, could we have
19 a procedure set up if somebody on the jury has trouble hear-
20 ing a witness they could raise their hand?

21 THE COURT: I agree. If you can't hear,
22 obviously, let me know.

23 JUROR NO. 12: The wind is quite noisy, so if
24 people could keep their voices up, it would be helpful.

25 THE COURT: Fine. If you can't hear, raise your

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Flanagan - direct

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2 hands.

3 Q Mr. Flanagan, in the fall of 1975, what proce-
4 dures would a bank official follow if an individual came
5 into the bank requesting a loan?

6 A He would ask him the purpose of the loan, he
7 would ask him the source of repayment. If it was to be an
8 installment loan, he would ask him for an installment loan
9 application, which then would be cleared or given what is
10 called a credit check to check the prior credit history.

11 If it was to be what we call a commercial loan,
12 he would fill out a financial statement, or if it was a
13 corporation, present a financial statement of the corpora-
14 tion.

15 Q Would he be expected to meet the individual to
16 whom the loan was going to be made?

17 MR. MURPHY: Objection, your Honor.

18 MR. WEINBERG: Your Honor, I think it is a
19 proper question.

20 MR. MURPHY: If your Honor please, this is argu-
21 ment.

22 MR. WEINBERG: It is not argument. It is the
23 procedures being followed by a bank.

24 THE COURT: Ask him. Don't use those words.
25 Ask him what were the requirements, if any, about personal

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2 contact with the person to whom the loan was intended. You
3 will get objections about "expected" and so forth.

4 Q Mr. Flanagan, were there any requirements that
5 a loan officer or bank employee should follow relating to
6 personal contact with the individual borrowing the money?

7 A It would be normal procedure for the loan
8 officer to interview the prospective borrower. Certainly
9 in all cases on commercial loans. On installment loans
10 that procedure would not be necessarily adhered to as
11 closely.

12 Q What would determine whether or not the proce-
13 dure was adhered to closely in an installment loan?

14 A In an installment loan, the application might
15 be made to an intallment loan interviewer who would take
16 down all the information, have the application cleared, and
17 it might be referred to somebody with loan authority to
18 approve it or not approve it.

19 THE COURT: Am I to understand that except in
20 the instance you mentioned all other loan applications, the
21 party who would approve the loan would personally see the
22 person to whom the loan was being made?

23 THE WITNESS: If we are talking about commercial
24 loans, it would be the normal procedure. Now, it is possible
25 if the loan in question exceeded the authority of the loan

2 officer and he had to present it to some officer with such
3 authority that that officer making the decision may or may
4 not interview or talk to the applicant. He might depend
5 upon and make his evaluation and decision upon the inter-
6 view which the junior loan officer, shall we say, had
7 conducted. It would certainly be normal procedure for the
8 loan officer to interview the applicant, when we are talk-
9 ing about commercial loans.

10 If you are talking about installment loans,
11 it is done many times but not necessarily adhered to, if
12 for no other reason, because of the volume of the applica-
13 tions and so forth.

14 Q And in the case of the installment loan, there
15 would still be a personal interview with an installment
16 loan official?

17 MR. MURPHY: Objection, your Honor. It mistakes
18 the prior testimony and it is also leading. I object to
19 this. This is an important point.

20 MR. WEINBERG: I am simply trying to clarify the
21 testimony.

22 THE COURT: As I understand it, Mr. Murphy, I
23 didn't understand that he had mistated his prior testimony.
24 I thought that is what he said. I thought he said in in-
25 stallment loans the loan first would be processed in the

2 installment loan department, or whatever, and that that
3 individual would interview the man and he might seek
4 approval someplace else and the man that approved would not
5 necessarily interview.

6 MR. MURPHY: Your Honor, I object to the Court
7 stating what the man said to the jury, even by your Honor.

8 THE COURT: What the testimony is is for the
9 jury to decide. You objected to it. I am merely stating
10 what I understood the testimony to be. The witness is
11 here and can correct it if he wishes to.

12 MR. WEINBERG: Your Honor, may I have the last
13 question read back?

14 THE COURT: All right.

15 (Question read.)

16 A Yes, that is normal procedure for anybody coming
17 in to apply. There would be an exception -- it doesn't
18 happen too often -- but you can apply by mail. You send in
19 an application. However, that is not the usual way.

20 Q Under what circumstances would that be done, Mr.
21 Flanagan?

22 A If somebody wanted an installment loan and
23 telephoned and said, "Would you mail me an application,"
24 we certainly would mail them an application.

25 Q And what would be done then with the application

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Flanagan - direct

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2 once it came through the mail?

3 A It would be processed and given the same credit
4 check as if the individual had come in and applied in person
5 It would then be referred to somebody who had authority to
6 approve it or deny it.

7 Q Mr. Flanagan, would you describe to the jury
8 the difference between the term "installment loan" and
9 "time loan".

10 A An installment loan is perhaps best described
11 as consumer credit type of loan where an individual comes
12 in and wants to finance an automobile, buy some furniture,
13 finance a vacation. Usually it is repaid over a period of
14 one, two or three years by means of monthly installments,
15 and the borrower receives a payment book and each month
16 makes the payment by pulling out the coupon for that
17 particular month.

18 The time loan is a short-term extension of
19 credit with a maturity of perhaps one, two or three months,
20 very rarely more than three months, although there may be
21 the option to renew, placed in an entirely different
22 department from the installment loan, a department called
23 the commercial loan department.

24 The time loan -- the name indicates it has a
25 fixed maturity in time when the entire principal, in effect,

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Flanagan - direct

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2 becomes due.

3 THE COURT: Excuse me. I see that there is one
4 juror still uncomfortable. Those of you who are feeling a
5 draft, there are some seats down here.

6 JUROR NO. 10: I would appreciate it. It is
7 drafty.

8 Q Mr. Flanagan, are you familiar with the term,
9 a "chattel mortgage security agreement"?

10 A Yes.

11 Q Would you describe for the members of the jury
12 what a chattel mortgage security agreement is?

13 A A chattel mortgage security agreement is a
14 document whereby the borrower creates a security interest
15 in favor of the bank in connection with an article of
16 collateral such as an automobile.

17 Q What happens if the borrower defaults on the
18 loan that he has obtained from the Barclay's Bank?

19 A If the bank holds a security interest in a
20 given article the bank has the right to reposses the article.

21 Q When is the chattel mortgage security agreement
22 executed or signed by the borrower?

23 A It is signed at the time that the note itself
24 is signed, in other words, prior to the funds being dis-
25 bursed.

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Flanagan - cross

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2 exhibit?

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3 (Cleary Exhibit A marked for identification.)

4 Q An item marked Cleary's Exhibit A for identi-
5 fication. I ask you if you recognize it.

6 A Yes.

7 Q What do you recognize it to be? How do you
8 recognize it?

9 A This is a subpoena which was served on the
10 bank subpoenaing certain of the bank's records in connection
11 with this case.

12 Q I ask you whether pursuant to this subpoena you
13 were asked to produce a bank operating manual.

14 A Yes.

15 Q Is there a written manual which governs the
16 practices to be followed in making the loans which are at
17 issue in this case?

18 A There is a manual which sets forth the documen-
19 tation to be obtained in connection with all loans placed
20 in the commerical loan department. Now, the loans under
21 question here today, I believe there are fifteen of them,
22 and I believe twelve of those were placed in the commercial
23 loan department.

24 Q Referring to those twelve in the commerical
25 loan department, is there a manual which governs -- a

2 written manual which governs the procedure of the bank with
3 respect to those?

4 A About completing documentation, yes.

5 THE COURT: What is that?

6 THE WITNESS: With completing the documentation
7 for that type of loan, yes.

8 Q Did you bring that manual with you?

9 A Yes, I did.

10 Q Could you show it to me, please?

11 A Here is it. (Handing)

12 MR. MURPHY: Mr. Clerk, could you mark this item
13 as Cleary Exhibit B, today's date.

XXX

14 (Cleary Exhibit B marked for identification.)

15 Q I show you an item marked for identification as
16 Cleary Exhibit B and I ask you if you recongize that item.

17 A Yes.

18 Q And what is it?

19 A It is Barclay's Bank of New York, Westchester
20 Regional Head Office, Operating Manual, Commercial Loan
21 Department, procedures to be followed concerning all
22 commercial loans.

23 Q And is this the Barclay's written handbook on
24 the procedures to be followed in twelve of the fifteen
25 loans that are at issue in this matter so far as you know?

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A Yes.

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Q And those twelve loans are the loans secured by a promissory note by the borrower, is that right?

5

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A They are represented by a promissory note. They are not secured by a promissory note.

7

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Q Shall we say represented, then, by a promissory note?

9

10

11

A Right.

Q And the other loans represent installment loans?

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A That's correct.

Q So the manual, Exhibit B, governs the regular promissory note type loans, is that right?

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A Yes.

Q Where is that manual, Exhibit B, kept at Barclay's Bank?

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A The manual is kept -- first of all, there are many copies of the manual. There is also a copy available in the commercial loan department. When an individual goes through the commercial loan department to -- in a period of training, he is provided with a copy of the manual.

23

24

Q Do you know whether or not Mr. Cleary received a copy of this manual?

25

A I believe Mr. Cleary received a copy. At the

time during this training period of Mr. Cleary, for six weeks of that time I was in London on bank business, and I have been told that Mr. Cleary, during his course of training, did go through the commercial loan department.

Q Did you discuss -- is there anything else -- withdrawn.

Is there anything else in writing which govern's the procedures to be followed on making commercial loans of \$5,000 or less, shall we say, than this written document you have before you?

A What do you mean by "making"?

Q The procedures -- I ask you, is there any other written material which you would deliver to a bank employee who was charged with any aspect of writing or approving or authorizing commercial loans of \$5,000 or less other than Cleary Exhibit B for identification, as far as you know?

A The \$5,000 or less, or more, is irrelevant, it has nothing to do with it. The manual would cover all commercial loans of whatever the amount may be.

There is another loan manual which would be delivered to a trainee when he goes through the credit department which tells how to fill out a credit application, which is basically a reporting document of the bank,

2 whereby loans of a certain size are reported.

3 Q What size are those loans?

4 A Normally, where branches are reporting to the
5 regional head office, it is normally \$25,000 and over,
6 and when the regional head office is reporting to the
7 President's office, it's \$100,000 and over.

8 Q Besides the two items you have identified,
9 is there anything else in writing that was given to Mr.
10 Cleary or given to bank employees who are in the position of
11 manager or assistant manager or have other loan-granting
12 authority?

13 A There is a loan officer's guide now, but that
14 was not in effect at the time in question. Mr. Cleary or
15 any other trainee in the course of going through a train-
16 ing program might receive some other documentation, but I
17 would say if you are talking about a manual, it would only
18 be these two, if you are talking about manuals as such.

19 I should stress that these manuals do not cover
20 the assessment of credit. They are merely on documentation.

21 Q What do you mean by assessment of credit?

22 A Whether the loan officer should approve or de-
23 cline the loan.

24 Q And what are the materials in writing with re-
25 gard to assessment of credit at Barclay's Bank?

2 A Assessment of credit involves a lot of subjective
3 judgment which comes over a period of time, and there
4 is no manual for this as such, at least there wasn't at
5 this time. There is now which goes -- the loan officer's
6 guide has certain sections along those lines now, but that
7 was not in effect in the fall of 1975.

8 Q And how does one learn about the subjective
9 standards to be applied in assessing a loan at the bank?
10 What are the procedures?

11 A By working with someone who has loan authority
12 and seeing how he evaluates a credit, how he assesses it,
13 how he reaches his decisions, possibly by going and taking
14 courses at the American Institute of Banking. It is some-
15 thing that is gained over a period of time.

16 As I say, there is a lot of subjective judgment
17 and you have to learn how to exercise that subjective judgment.

18 Q During the time Mr. Cleary was working with you
19 at the branch office at Barclay's Bank, how many people were
20 authorized at that bank to make loans of \$5,000 or less?

21 A At the bank or at the branch?

22 Q At the branch. Excuse me.

23 A When you say \$5,000 or less, suppose somebody
24 could make up to \$50,000, would they be included, or do you
25 mean just those that have a lending limit of \$5,000?

1
2 Q I would ask for those who could lend up to
3 \$5,000 or beyond \$5,000, whatever their lending limit was,
4 as long as it included the \$5,000.

5 A I am answering the question in terms of the
6 branch personnel only. There are other officers who were
7 in the same building on the same banking floor but were part
8 of the regional head office.

9 If you are talking about the branch, there would
10 have been perhaps four. It is difficult. I almost would
11 have to refer to records to get actual names at the time,
12 but I can identify three by name. I would just have to
13 look who was on the platform at that time. We were going
14 through a period of expansion so there was some fairly rapid
15 turnover of personnel.

16 Q Who were the three persons that you can name
17 at this time?

18 A One was myself, one was Paul Denton, who was
19 also a Vice President, and one was Mr. Cleary.

20 Q Who was the supervisor of Mr. Cleary?

21 A I was.

22 Q You were his direct supervisor at the time?

23 A That's correct.

24 Q Where did you sit with respect to Mr. Cleary's
25 desk at this time?

2 A I was three desks away.

3 Q And you were in a position where you could ob-
4 serve him at work, I take it?

5 A Well, I was roughly the same distance as you
6 are from me now. So I could see him there, but naturally,
7 I couldn't see everything he was doing.

8 Q Now, referring to the subpoena that was served
9 upon you, I ask you whether you were asked to furnish eval-
10 uations of Mr. Cleary for raises made by yourself in or
11 about July --

12 THE COURT: Don't ask for them. If you want a
13 document, ask him has he brought it.

14 Q Did you bring that document?

15 A Yes.

16 Q Would you find that for us, please?

17 A Here it is. (Handing)

18 Q I note for the record that you have shown me
19 a carbon copy of an original.

20 A This is the original here. Sorry.

21 MR. MURPHY: I ask the Clerk to mark this original
22 as the next exhibit for Mr. Cleary in order.

23 (Defendant Cleary Exhibit C marked for identi-
24 fication.)

25 Q I show you Exhibit C for identification and I ask

2 MR. MURPHY: Although I hope for the best I
3 fear the other. I have my client's interest at heart.

4 THE COURT: Okay.

5 (In open court:)

6 THE COURT: Mrs. Frey, come up here, please.

7 (At the bench with Mrs. Frey:)

8 THE COURT: I am sorry I didn't know about this
9 earlier, but I think under the circumstances in view of the
10 connection and so forth it is best that you not sit. He is
11 going to be the next witness. So I think you had better be
12 excused.

13 (In open court:)

14 THE COURT: Call your next witness.

15 MR. WEINBERG: The Government calls Jerome Healy.

16 J E R O M E F. H E A L Y, a defendant, called as
17 a witness by the Government, being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WEINBERG:

21 Q Mr. Healy, let me ask you to make sure you speak
22 in a very loud voice so all the members of the jury can
23 hear you.

24 Mr. Healy, what is your occupation?

25 A I am an attorney.

2 Q Have you ever been convicted of a crime?

3 A Yes, I have.

4 Q When were you convicted of that crime?

5 A In August of 1975.

6 Q And what crime were you convicted of?

7 A Aiding and abetting in a bank embezzlement.

8 Q And when were you sentenced in connection with
9 that conviction?

10 A October 31, 1975.

11 Q Mr. Healy, have you been named as a defendant in
12 this case?

13 A Yes, I have.

14 Q And have you entered a guilty plea in this
15 case?

16 A Yes, I have.

17 Q Prior to your entry of a guilty plea --

18 MR. MURPHY: Your Honor, excuse me. May I have
19 a limiting instruction as to the effect of his entry of a
20 plea on the other defendants in this case?

21 THE COURT: You may.

22 Mr. Healy was named as a defendant in this case
23 and he has pleaded guilty, but his plea is a personal state-
24 ment of his own feelings in this matter, of his own views
25 in this matter, and has nothing to do with the other defend-

1 gwjl 2

2 (Jury not present.)

3 MR. MURPHY: Before we have the jury out, Mr. Flanagan
4 is going to be recalled. I would like him to identify the
5 initials on those notes which were put in through Mr. Healy
6 yesterday. That was something which was not on the record.
7 It should not take a very long time.

8 THE COURT: I will allow that. I am not reopening
9 cross examination, but since you have told me that I will
10 allow that, and you can ask him. Your cross examination will
11 be limited to what I told you about.

12 MR. BERGER: Is Mr. Flanagan going to be put on
13 the stand prior to Mr. Healy coming back?

14 THE COURT: It is up to you.

15 MR. WEINBERG: I think for the convenience of
16 Mr. Flanagan we should, because I imagine Mr. Healy's cross
17 examination would take some time.

18 THE COURT: If it is agreeable to counsel, it is
19 certainly no problem with me.

20 Get the jury.

21 MR. WEINBERG: Your Honor, I have one question.
22 I represent to the Court that I did not speak to Mr. Flanagan
23 after court yesterday at all about the testimony. I told
24 him when to come back and to turn over some documents.

25 I also represent to the Court that I had intended

1 gwjl 3

2 to ask him a specific question that I forgot to ask yesterday.
3 Would I be permitted to ask that question?

4 THE COURT: All right. You ask that specific
5 question and defense counsel will obviously be able to cross
6 examine if that specific question raises any areas. You will
7 be able to go into redirect with respect to any areas these
8 people open up.

9 MR. MURPHY: Your Honor, just one minute.

10 Two other items. One, I understand that a letter
11 of resignation was written by Mr. Cleary under direction of
12 this witness and I would ask that question as well as an
13 offer of proof, again trying to get that in.

14 THE COURT: No.

15 MR. MURPHY: I just make that offer of proof.

16 THE COURT: I don't see where that helps you.

17 MR. MURPHY: I could just ask him that question.

18 THE COURT: You made it on the offer of proof.

19 I don't see where it helps you, but if you would ask the
20 question, he would respond that he did do so.

21 What else?

22 MR. MURPHY: The other thing, your Honor, is I
23 understand that the government is going to put in some similar
24 act type evidence which I would oppose, but if they are
25 going to put that in there, a document in the materials that

2 Healy's questioning interrupted. After a conference last night
3 and this morning, I am allowing the government to ask a
4 question that was not asked of Mr. Flanagan, I am allowing
5 defense counsel only to cross examine if that opens any areas,
6 I am allowing Mr. Murphy to make some inquiries about the
7 exhibits and I am allowing Mr. Berger to go into an area
8 that I had cut off yesterday. We will interrupt Mr. Healy
9 for that purpose and then Mr. Healy will get back on the
10 stand.

11 E D W A R D C. F L A N A G A N, recalled.

12 THE CLERK: I remind you, Mr. Flanagan, you are
13 still under oath.

14 THE COURT: Why don't you start--no, I suppose not.

15 DIRECT EXAMINATION

16 BY MR. WEINBERG:

17 Q Mr. Flanagan, in evaluating whether or not to
18 give a loan, what criteria should a bank employee use in
19 deciding whether or not to approve a loan?

20 A The most important criteria would be the ability
21 of the prospective borrower to repay the loan, which the loan
22 officer must evaluate before he makes a decision.

23 Another factor would be what assets does the pro-
24 spective borrower have in the event his income was not suf-
25 ficient for one reason or another to make the payments or

1 gwjl 7 Flanagan-direct

2 repay the loan, does he have assets he can fall back on to
3 liquidate and repay the loan.

4 Another factor is how much outstanding debt does
5 he have in addition to the loan he is now applying for. Some-
6 one might apply for a \$5,000 loan and have no other debt and
7 be granted the loan. Under the same set of circumstances,
8 if he had three other loans outstanding, for the sake of
9 argument, totalling \$10,000, it might well be in the judgment
10 of the bank his income would not be sufficient for him to
11 carry those loans and the loan would be declined.

12 Naturally, the honesty and integrity of the pro-
13 spective borrower is also an important factor. All of these
14 things must be evaluated by the loan officer before reaching
15 his decision.

16 MR. WEINBERG: Thank you, Mr. Flanagan.

17 THE COURT: All right, Mr. Murphy.

18 MR. MURPHY: Mr. Weinberg, could I have Exhibits
19 2, 7, 11, 17, 21, 27 and 29?

20 (Documents handed to Mr. Murphy.)

21 CROSS EXAMINATION

22 BY MR. MURPHY:

23 Q I show you Government's Exhibits 7, 11, 21, 29
24 and 17, which are the six notes introduced in evidence in this
25 case from your bank, and I ask you first of all if you recog-

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Flanagan-cross

2 recognize them as being on Barclay's forms?

3 A Yes, they are.

4 Q And were those actual notes which your bank
5 received for certain loans made by the bank?

6 THE COURT: You went into that.

7 MR. MURPHY: Not through this witness. It came
8 in through Mr. Healy. He has never identified them as bank
9 records.

10 THE COURT: I misunderstood you.

11 MR. MURPHY: I withdraw that question, your Honor.

12 THE COURT: I misunderstood. I thought these
13 were questions that you had omitted to ask Mr. Flanagan, not
14 questions that arose by the testimony of another witness.

15 MR. MURPHY: I will only ask the question of the
16 initials, your Honor. I will withdraw the other question and
17 prove it in another way.

18 THE COURT: All right.

19 Q I show you the left-hand margin on each of these
20 notes and I ask you if you recognize the initials on that
21 margin as to the approving bank officer.

22 A Yes.

23 Q And who was that?

24 A Mr. Cleary.

25 Q And as to the reviewing bank officer?

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2 A That's myself.

3 Q You have initialled each of these notes?

4 A That's correct.

5 Q And did you do that in the regular course of your
6 business as a bank officer?

7 A Yes.

8 Q I show you F marked for identification, which
9 was marked for identification yesterday, and I ask you
10 whether Mr. Cleary wrote that letter under the bank's
11 instructions?

12 THE COURT: I told you not to ask that.

13 MR. MURPHY: I misunderstood you, your Honor.

14 THE COURT: Go ahead, answer. Now that you have
15 asked it, go ahead.

16 A Mr. Cleary wrote the letter. I don't know what
17 you mean by under the bank's instructions. He was given the
18 opportunity to resign, if that's what you mean, which opportunity
19 he accepted and resigned by means of this letter which he
20 wrote himself and none of the wording was suggested by any-
21 body from the bank, to my knowledge.

22 MR. MURPHY: My offer of proof stands, your Honor,
23 but I won't go into it.

24 THE COURT: He said he was given an option. The
25 bank gave him--you are saying the bank gave him an option to

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Flanagan-cross

2 through Barclay's Bank?

3 THE COURT: What has that got to do with this case?

4 MR. BERGER: May I make a pro offer?

5 THE COURT: I told you what you could do. If
6 you keep to that, that is fine, but I am not going to allow
7 this to be expanded to a lot of things that are irrelevant.

8 MR. BERGER: To respect your wishes, I will do
9 that with another witness.

10 THE COURT: Do you have any further questions?

11 MR. WEINBERG: Yes, I do, your Honor, briefly.

12 REDIRECT EXAMINATION

13 BY MR. WEINBERG:

14 Q Mr. Flanagan, you were shown these exhibits,
15 Government's Exhibits 17, 7, 21, 11, 27 and 29. You were
16 shown these by Mr. Murphy.

17 THE COURT: And 17.

18 MR. WEINBERG: And 17, your Honor. Thank you.

19 Q Your initials appear on those notes?

20 A Yes.

21 Q Were those notes given to you by Mr. Clearv?

22 A They were not given to me by Mr. Clearv, no.

23 Q Did you see them after Mr. Clearv had approved
24 them?

25 A Yes.

2 Q And each of those notes is for \$5,000, is that
3 correct?

4 A Yes.

5 Q And Mr. Cleary had authority to approve a loan
6 up to \$5,000 for one individual, is that correct?

7 A That's correct.

8 THE COURT: What do your initials mean?

9 THE WITNESS: Part of my duties is the day--the
10 following day I review or I look at every loan that goes on
11 in the commercial loan department for the Westchester
12 regional head office. I look at every note. I don't evaluate
13 the credit. I look at every note just to review every note
14 that goes on the following day.

15 THE COURT: In other words, it was for your
16 information?

17 THE WITNESS: That's right.

18 THE COURT: By the time you look at it--

19 THE WITNESS: The loan has already been made,
20 your Honor, and is on the books.

21 THE COURT: And the check has been given?

22 THE WITNESS: The check has been disbursed. There
23 is nothing I can do to say, "You can't make this loan,"
24 at that point.

25 Q In answer to Mr. Berger's questions you stated
there were some problems in collecting loans that had been

1 gwjl 22

Flanagan-redirect

2 know at what date it was made, but I do know such a request
3 was made.

4 Q And the request to close out his account was
5 made because of certain difficulties the bank had experienced
6 with Mr. Passarelli?

7 A That is correct.

8 MR. WEINBERG: No other questions, your Honor.

9 MR. MURPHY: Your Honor, I have recross.

10 RECROSS EXAMINATION

11 BY MR. MURPHY:

12 Q His Honor asked you about the meaning of your
13 initials on these notes. Do you recall those questions?

14 A Yes.

15 Q You said they were part of your duties, is that
16 right?

17 A That's right.

18 Q His Honor asked you whether it was just for your
19 own information that you put those initials on, do you recall
20 being asked that question by the Court?

21 A Yes, yes.

22 Q Now, you were running the bank, is that correct?

23 A I wasn't running the bank. I was branch manager
24 and I had duties as senior regional loan officer.

25 THE COURT: I am not going to permit you to argue

1 gwjl 23

Flanagan-redirect

2 with this man as to what his responsibilities are. He told
3 you that. I am not going to permit any argument about them.

4 MR. MURPHY: I asked him if it was just for his own
5 information.

6 THE COURT: You asked that. Now you are telling
7 him that he ran the bank. He told us what he did and told us
8 what his initials were. You can make inquiry about that, but
9 I won't permit any argument.

10 MR. MURPHY: All right, your Honor. I will try to
11 phrase my questions to avoid the Court's objection. I will
12 ask the witness to pause and if I am asking the question
13 improperly, if the Court will tell me I will try to modify
14 my questions.

15 THE COURT: All right.

16 Q You were also asked or testified that you didn't
17 have an opportunity to stop a loan once you did review the
18 note and the loan document, do you recall that testimony?

19 A That's correct.

20 Q Because the loan had already been disbursed?

21 A That is correct.

22 Q However, did you have an opportunity to stop
23 subsequent loans of the same nature if you found them to vio-
24 late bank practice or procedure.

25 A I would have had that opportunity, yes.

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Healy-cross

2 Q Did you tell Mr. Cleary at any time during the
3 time you were getting these loans from him that he was making
4 a mistake in making you a loan?

5 A No, I did not.

6 Q Or in making a loan for any of your clients?

7 A No.

8 Q And everything you could you tried to reassure
9 him he was acting properly in making those loans, is that
10 correct?

11 A Yes.

12 Q And it was very important to you to reassure him,
13 wasn't it?

14 A I reassured him.

15 It was important to me to obtain loans, yes.

16 MR. MURPHY: No further questions.

17 CROSS EXAMINATION

18 BY MR. BERGER:

19 Q Mr. Healy, my name is Mr. Berger and I represent
20 Mr. Passarelli.

21 How long did you know Mr. Walter Steel?

22 A I have known him for approximately ten years,
23 twelve years.

24 Q Were you his attorney?

25 A I have handled certain matters for him, yes.

1 qwhr 8

2 person. I have to look at what is before me. What
3 you may offer in answer to that is something else. It
4 may complicate matters. At the present time that is the
5 government's case. I don't see in substance very much
6 difference between the Chemical case and this one.
7 I am going to allow it. Obviously I will allow you to
8 put on any rebuttal that you feel the matter warrants.

9 Anything else?

10 Get the jury.

11 (The jury enters the courtroom.)

12 THE COURT: Good morning.

13 Call your witness.

14 MR. WEINBERG: Your Honor, may I read a short
15 stipulation into the record?

16 THE COURT: Yes.

17 MR. WEINBERG: It is hereby stipulated and
18 agreed between and among Robert B. Fiske, Jr., United
19 States Attorney for the Southern District of New York,
20 by Richard Weinberg, Assistant United States Attorney,
21 of course, and Daniel Murphy II, counsel for defendant
22 William Cleary --

23 MR. MURPHY: Just a second. What stipulation
24 is this?

25 Let me see what it says.

1 qwbr 9

2 MR. WEINBERG: I am sorry, your Honor. We
3 have spoken about it.

4 (Counsel confer.)

5 MR. MURPHY: I do stipulate.

6 MR. WEINBERG: I will begin at the beginning,
7 I guess.

8 It is hereby stipulated and agreed between
9 and among Robert B. Fiske, Jr., United States Attorney
10 for the Southern District of New York, by Richard Weinberg,
11 Assistant United States Attorney, of course, and Daniel Murphy
12 II, counsel for the defendant William Cleary, and Morton
13 Berger, counsel for the defendant Gustavo Passarelli
14 that in 1975 and in 1976 the deposits of all branches of
15 Barclay's Bank of New York, including the branch office
16 at 491 Main Street, New Rochelle, New York, were insured
17 by the Federal Deposit Insurance Corporation.

18 Your Honor, the government now calls Carmine
19 Liberatore.
20
21
22
23
24
25

gwbr 22

Savoca-direct

THOMAS SAVOCA, called as a witness
on behalf of the government, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Savoca, where are you employed?

A Barclay's Bank of New York.

Q How long have you been employed there?

A About 18 years.

Q Please keep your voice up.

A About 18 years.

Q Mr. Savoca, in 1973, what department of
Barclay's Bank did you work with?

A Installment loan department.

Q And do you still work in that department now?

A Yes.

Q And what is your major responsibility now at
Barclay's Bank?

A Well, I am second in charge of the entire
operation of the department.

Q Of the installment loan department?

A That is correct.

Q Did you have that position in 1973 also?

A Yes, I did.

1 gwbr 23

Savoca-direct

2 Q Are you familiar with the term "floor planning"?

3 A Yes, I am.

4 THE COURT: With the term what?

5 MR. WEINBERG: Floor planning. I had never
6 heard of it either.

7 THE COURT: F-l-o-o-r?

8 MR. WEINBERG: I believe so.

9 Q Mr. Savoca, would you please explain what the
10 term "floor planning" means to the jury?

11 A Well, it is basically a pre-arranged credit line
12 to a business where the bank gives a certain amount of credit
13 to a company or an individual which allows them to buy
14 merchandise, namely, automobiles or white goods or what-
15 ever, and this merchandise -- this line is given to them
16 for the entire year and they are able to buy their vehicles
17 and as they purchase a vehicle the bank gives them the
18 money for it and as they sell the vehicle or the white
19 goods or whatever, they pay off whatever is due to
20 the bank and the company retains the profit.

21 Q Under a floor planning agreement, is the
22 borrower obligated when he sells a particular car to pay
23 the bank immediately the proceeds from the sale of that
24 car --

25 A Yes.

1 gwbr 24 Savoca-direct
2 Q -- in accordance with the loan agreement?
3 A Yes.
4 Q Mr. Savoca, do you know Gustavo Passarelli?
5 A Yes, I do.
6 Q Do you see him in the courtroom?
7 MR. BERGER: Identification conceded.
8 Q Mr. Savoca, did you have a conversation with
9 Mr. Passarelli concerning instructions to terminate Mr.
10 Passarelli's floor planning arrangement that he had with
11 Barclay's Bank?
12 A Yes.
13 Q Do you recall approximately when that con-
14 versation took place?
15 A Probably the early part of 1973.
16 Q And do you recall who was present?
17 A It was a telephone conversation.
18 Q And what did you say to Mr. Passarelli?
19 A Well, it was indicated to him that it was
20 necessary for us to curtail our floor plan line with him.
21 Q Did the bank then begin to curtail the floor
22 planning arrangement that it had with Mr. Passarelli?
23 A The bank requested that -- the bank indicated
24 to him that we would no longer do any business and requested
25 that as he sold his vehicles we would be required to be

1 gwbr 25

Savoca-direct

2 paid in full on each particular vehicle.

3 Q Are you familiar with the term "out of trust"?

4 A Yes.

5 Q Would you explain what the term "out of trust"
6 means?

7 A Well, these vehicles were floor checked on a
8 monthly basis.

9 Q What do you mean by floor checked?

10 A As long as we are giving the money for the
11 purchase of these particular vehicles, we do a monthly floor
12 check, which assures the fact that the merchandise which
13 is being purchased is maintained on the premises of the
14 company.

15 Q In other words, you go to the borrower's
16 premises and check to see that the cars are still there?

17 A That is correct.

18 Q Did there come a time when you found out that
19 Mr. Passarelli was out of trust?

20 A Yes.

21 Q And when was that?

22 A In approximately March of 1973.

23 Q And what did it mean that Mr. Passarelli was out
24 of trust?

25 A It meant that the floor checker who went to

1 gwbr 26

Savoca-direct

407

2 sight the vehicles on the premises found that some of the
3 vehicles were not located there, that we could not locate
4 them.

5 Q Does Mr. Passarelli now have a floor planning
6 arrangement with Barclay's Bank?

7 A No, sir.

8 MR. WEINBERG: No other questions, your Honor.

9 CROSS EXAMINATION

10 BY MR. MURPHY:

11 Q Mr. Savoca, you have been with Barclay's Bank
12 for 18 years?

13 A Correct.

14 Q How long have been in the installment loan
15 department?

16 A 18 years.

17 Q And are you at the main office or what branch
18 are you?

19 A I was originally at the regional head office which
20 was formerly First Westchester National Bank prior to
21 the merger. Then when we merged with Barclay's Bank of
22 New York we were transferred to the Larchmont office,
23 where we are now.

24 Q So you were actually with First Westchester
25 for a period of time and then went over with the

transition into Barclay's?

A Correct.

Q And when was that merger, by the way?

A I believe it was 1974.

Q In installment lines you are familiar with how they operate at the bank, I take it?

A I hope so.

Q Are there applications filled out by persons that want to have an installment loan at the bank?

A Yes, sir.

Q And installment loans are when you want to buy an automobile or make repairs on your house or stuff like that?

A Yes, sir.

Q And then what happens with the application form?

A Well, the application form is normally completed at any one of the branches and the application can either be phoned into the department or it can be forwarded to the department.

Q Forwarded by whom?

A By the branch manager where the loan was originally taken. Then the application is credit checked.

Q By credit checked you mean what?

A Credit checking is basically calling for

information to a centralized bureau which provides you with information on the credit of the individual.

Q And do you have a procedure where you actually get the application itself and keep it on file in the installment loan department?

A Yes.

Q And when the application comes in, does it come in in written form or oral?

A Written.

Q Do you review the application at all or do you file it or what?

A Well, it depends on the application. Some are approved by the branch manager who has lending authority, and all those papers come over to the branch and the individual file is set up. I do not review the applications that are already pre-approved by the branch manager who has lending authority. Someone else does that.

Q Who else does that?

A Well, a clerk in the department.

Q They would review the application?

A For completeness, that is right.

Q And also the credit check, I take it? Was that done by the clerk?

A All they do is check for completeness of the

2 file, to make sure the application is filed, the signed
3 note is there and whatever papers that go along with it.

4 Q Who does the credit check -- yourself or what?

5 A No, we have individual clerks who do that.

6 Q Is that, as you have laid it out, the procedure
7 followed at Barclay's Bank for installment loans?

8 A Yes, sir.

9 MR.MURPHY: Thank you.

10 MR. BERGER: May I have a moment, your Honor?

11 (Pause.)

12 CROSS EXAMINATION

13 BY MR. BERGER:

14 Q Mr. Savoca, my name is Mr. Berger. I represent
15 Mr. Passarelli.

16 How long do you know Mr. Passarelli?

17 A I met him when we started doing business with
18 him back in 1972.

19 Q And this floor planning that we are speaking
20 of at Barclay's Bank, what was the name of Mr. Passarelli's
21 company?

22 A Westchester Recovery.

23 Q That is the name of the company for which the
24 floor planning was being done?

25 A Yes, sir.

Q Did there come a time in 1973 when Mr. Passarelli had a discussion with you and other officers of the bank concerning increasing the amount of his floor planning?

A I vaguely remember something like that.

Q As a matter of fact, he wanted to increase from 30,000 to \$50,000, is that correct?

A 25 to 50.

Q 25 to what?

A To 50,000.

Q 50,000.

Was that because of the fact that he had gone out of new cars and wanted to go into the used car business heavier or something like that?

A No. He felt he wanted more money to be able to do more business.

Q And did he fill out an application to increase his floor planning?

A Not to my knowledge.

Q Do you recall whether an application was given to the loan committee to increase Mr. Passarelli's floor planning?

A There are no applications that are submitted for the line. There are financial statements that are

1 gwbr 31

Savoca-cross

2 submitted.

3 Q Was anything, to your knowledge, submitted
4 by Mr. Passarelli to increase his floor planning, the
5 amount of it?

6 A He may have submitted a financial statement.

7 Q And do you know whether that submission went
8 before the loan committee?

9 A I don't think it went before the loan committee.

10 I think it was just -- don't hold me to it, because
11 I vaguely remember. I think it was a matter of discussing
12 it over the telephone with the various officers of the
13 committee and indicating that they weren't interested in
14 increasing the line.

15 Q And one of those officers was Milton Kavey, was
16 it not?

17 A No, sir.

18 Q Is he on the committee?

19 A No.

20 Q Was he ever on the committee?

21 A No, sir.

22 Q Do you recall approximately when in 1973 there
23 was a discussion or a telephone call to any people on the
24 loan committee concerning the increase of Mr. Passarelli's
25 floor planning?

1 gwbr 32 Savoca-cross

2 A I don't remember the exact date it happened.

3 It was just during the general course of business that
4 he was interested in doing this, and I indicated that
5 I would take it up before the individuals of the com-
6 mittee, and as far as I recall I got back to him and
7 indicated that the bank wasn't interested in doing that.

8 Q As a matter of fact, the report came back
9 that they wanted to discontinue all of his floor planning,
10 did it not?

11 A That was after that.

12 Q When was it that the bank decided to discon-
13 tinue all of Westchester Recovery Agency's floor planning?

14 A Well, I believe it came at the time when --
15 approximately the latterpart of December of '73 when
16 we noticed that we had vehicles which were not on the
17 premises, and at that point we -- I believe I wrote a let-
18 ter to Mr. Passarelli making demand for the balance of the
19 line.

20 Q How many vehicles did Mr. Passarelli have on
21 the premises?

22 A About 10.

23 Q How many vehicles were missing?

24 A Five.

25 Q Were they sold?

1 gwbr 33

Savoca-cross

2 A No.

3 Q Mr. Passarelli did not sell a car and
4 fail to pay the bank, is that correct, in 1973?

5 That was not the reason for pulling the floor plan, was it?

6 A I am not following that question.

7 Q When you said that he was out of trust, you
8 did not mean that he had sold the car without paying
9 you, is that correct?

10 A I guess that could be correct.

11 Q What you meant was that you didn't know where the
12 location of the cars was, is that correct?

13 A We could not determine the location of the
14 vehicles, that is correct.

15 Q But they had not been sold?

16 A That I don't know.

17 Q As a matter of fact, it turned out that one of
18 the cars was damaged and was being repaired, is that cor-
19 rect?

20 A We were not able to determine that.

21 Q Isn't it a matter of fact you received the
22 insurance money on it?

23 A I don't recall that.

24 Q What date -- was this in February that you said
25 Mr. Passarelli was out of trust?

2 A December.

3 Q December?

4 A '73.

5 Q Didn't you receive an insurance company
6 check for \$2400 for one of those cars?

7 A It is possible. I don't recall at this point.
8 If you have a name, possibly I could --

9 Q Johnny Florio from New Jersey?

10 A Who?

11 Q Johnny Florio from New Jersey. Florio.

12 A Yes, we did receive an insurance check on a
13 particular vehicle. Whether that one of the missing ones,
14 I am not sure.

15 Q Ultimately, did you have a count and find all
16 the cars?

17 A No.

18 Q Did you try to?

19 A Yes.

20 Q Were you told where they were?

21 A I don't recall.

22 Q In January, the total amount of the floor
23 planning was \$9050, is that correct?

24 A Correct.

25 Q In addition to that, there were demonstrator

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Savoca-cross

416

loans in the name of Gus Passarelli and Dominick Liberatore?

A Correct.

Q That was in the amount of \$3,119.60 and
\$3,182.73, is that correct?

A It was in the \$3,000 figure. I couldn't
testify to the exact amount.

Q Then there was a Benjamin Ceron --

MR. WEINBERG: Objection, your Honor. I
hesitate. I don't see the relevance of going through this.

THE COURT: Neither do I.

MR. BERGER: I am sorry, your Honor. I didn't
hear you.

THE COURT: I think that is right. This is
peripheral. You certainly have a right to do what you have
done, to focus his attention on the circumstances and so
forth, but there is no point in going into all the details.
That is not relevant.

Q So that on January 9th of 1974 --

THE COURT: Mr. Berger --

MR. BERGER: Yes, your Honor.

THE COURT: There is no purpose, further
purpose, to be served in our getting the details.

MR. GERGER: I am not going into details now,
your Honor.

1 gwbr 36

Savoca-cross

2 Q On January 9, 1974, you demanded that Mr.
3 Passarelli pay off all the loans, is that correct?

4 A Yes.

5 THE COURT: That date was in 1974?
6 I thought it was '73?

7 THE WITNESS: It was January, '74.

8 Q And that meant pay them off whether or not he
9 sold any of the cars, is that correct?

10 A Correct.

11 Q He could have a lot full of inventory and whether
12 he sold one car or not your bank wanted the money back?

13 THE COURT: Mr. Berger, please.

14 Q The bank wanted the money regardless of whether
15 the inventory was sold or not.

16 THE COURT: Come.

17 MR. BERGER: If your Honor please --

18 THE COURT: Mr. Savoca's statement as to the
19 agreement is clear. He indicated that they had reached
20 the conclusion, after having reached whatever agreement
21 they had with Mr. Passarelli, that he had not kept up
22 to the terms of the agreement because the cars or the
23 merchandise was not on the premises, they didn't know where
24 they were, and therefore, as I understand him, they were
25 terminating the agreement and demanded that he pay up.

1 gwbr 37

Savoca-cross

2 Isn't that the essence?

3 THE WITNESS: Yes.

4 Q How much money did Gustavo Passarelli
5 or Westchester Recovery Agency owe the bank on the moneys
6 due on the demand made January 9, 1974?

7 A Nothing.

8 Q He paid it, didn't he?

9 A That is right.

10 Q He didn't have the money to give it to you
11 immediately, did he?

12 A No, sir.

13 Q So he went ahead and mortgaged his property,
14 right?

15 MR. WEINBERG: Objection, your Honor.

16 THE COURT: Sustained.

17 MR. BERGER: No further questions.

18 THE COURT: Anything further?

19 MR. WEINBERG: No further questions, your
20 Honor.

21 THE COURT: Thank you, Mr. Savoca.

22 (Witness excused.)

23 THE COURT: We will take our morning recess
24 for ten minutes.

25 (Recess.)

1 gwbr 64

2 THE COURT: On various documents that he approved
3 in terms of authorizing the loan.

4 MR. MURPHY: That's true, your Honor. If your
5 Honor's argument is that is enough to show a conspiracy,
6 I would respectfully except.

7 THE COURT: The point is I think that you may
8 have a point insofar as Mr. Cleary is concerned with re-
9 spect to what you call an agreement, but there certainly
10 was an arrangement between Mr. Passarelli and Mr. Healy.
11 That is clear.

12 MR. MURPHY: On the evidence --

13 THE COURT: That certainly is clear.

14 MR. MURPHY: No objection.

15 THE COURT: I will think about it, but I am not
16 sure whether or not Mr. Healy's dealings and arrangement
17 with Mr. Cleary can't be regarded as an agreement for
18 conspiratorial purposes. In any event, I understand your
19 argument.

20 MR. MURPHY: Let's talk a little bit about
21 misapplication of loans.

22 THE COURT: The conspiracy count is Count 1.
23 Where are we now?

24 MR. MURPHY: 2 through 8, 13 through 15.
25 Although you could distinguish between 2 through 8 -- let's call

1 gwbr 65

2 them for purposes of analysis the Passarelli loans and
3 let's call the other loans, 13 through 15, as the Healy
4 loans, because we don't really have any connection between
5 those two sort of wings of the problem involved in this
6 case, but for purposes of my argument they all can be
7 treated alike as to the counts on my argument.

8 The argument goes that in order to prove misappli-
9 cation, a legal matter, that you have to show that the --
10 and misapplication is all that is charged. They don't
11 charge abstraction, they don't charge embezzlement, they don't
12 charge theft, they don't charge any other counts in this
13 indictment, unless Mr. Weinberg --

14 THE COURT: The indictment reads "Did abstract
15 and misapply."

16 MR. MURPHY: If you want to have abstraction and
17 misapplication, I can talk about it. I thought the govern-
18 ment's proof was limited to misapplication.

19 THE COURT: I am talking about what is in
20 the indictment.

21 MR. MURPHY: I am talking about what's in the
22 proof, which is what we consider right now when we decide
23 whether to dismiss a count of the indictment. True, we
24 measure the indictment against the proof, but nevertheless
25 we look at the proof in order to make our determination.

1 gwbr 66

2 Now, in order to find a violation of the law
3 basically on misapplication -- and what misapplication means
4 and to a lesser extent what abstraction means -- by the
5 way, I said the government was limited to misapplication.
6 In the government's charges they don't talk about abstraction,
7 they ask the Court only to charge on misapplication.
8 That's why when I made my argument I also had in context
9 what your Honor has been asked to charge on, that the
10 government only offers a charge on misapplication. That is
11 why I have limited it. I decided to limit the argument to
12 that.

13 What do we have to show, I would contend, to find
14 a violation of the statute, we have to show some sort of
15 standard of the officer in making the loan. We know from
16 the cases and we know from general criminal background
17 negligence is not enough. You have to show something
18 more than negligence, and the Chemical Bank is a nice
19 example.

20 In the Chemical Bank you have somebody making
21 a loan in excess of his dollar authority to the same
22 borrower. There is an example of somebody exceeding his
23 authority, if that should be credited, that testimony.
24 There is your sort of, if credited, misapplication if you
25 find the intent and the other elements, there is your

1 gwbr 67.

2 misapplication.

3 Here, what kind of standards do we have?

4 Well, Mr. Flanagan came from the bank and although
5 Mr. Flanagan was the government's first witness and came
6 on for ministerial acts, for the purpose of Mr. Cleary
7 Mr. Flanagan is a very important witness, because he
8 set down the standards which apply to our defendant.

9 Essential to the criminal act and to due
10 process, which your Honor is much more familiar with than
11 I am, during your experience and background, is the
12 notice and opportunity to be heard, notice of what the
13 standards are which apply to the particular defendant.
14 That is what I will talk about. That notice has to come
15 from the lips of the witness Flanagan.

16 We have to find from his testimony that he
17 set down standards for making loans and loan applications which
18 the defendant Cleary violated, and we have to find those
19 violations were in excess of his authority. Let's just
20 talk about the standards and let's forget about the hedging
21 and the fudge factor, a reasonable man, business judgment.
22 Let's talk about the standards. What are they?

23 We have a document as to the memorandum rules
24 of the bank, Exhibit B in evidence, from Mr. Flanagan.
25 That doesn't have anything in writing that Mr. Cleary

1 gwbr 68

2 violated in making the loans. We have what Mr. Flanagan
3 says. He says that now there are but back then there weren't
4 any written rules for deciding whether somebody was a good
5 credit risk and assessing credit. It was different than
6 the way it is now.

7 Now they have written rules because an English
8 bank, relying on the common law, perhaps decided the code
9 law might be bad for banking procedures for a person like
10 Mr. Cleary, who wouldn't know unless it is set forth for
11 him.

12 So we have the bad man problem, according
13 to Justice Holmes, people who aren't good people. So
14 how do they know to conform their conduct to the principles
15 of the bank?

16 We don't have any evidence from Mr. Flanagan
17 that Mr. Cleary knew how or was shown and told in writing
18 or shown how to make these loans. He wasn't told that
19 if the borrower didn't come in, and it wasn't in fact,
20 although it was a regular course to have the borrower come
21 in, it wasn't a violation of banking practice to make a
22 loan when the borrower didn't come in. That's what he
23 stated.

24 Besides that, we have Mr. Flanagan approving
25 the loan documents and initialling the notes and we have

1 gwbr 69

2 the installment loans also being initialled. So you have it
3 done in regular course, you don't have any standards set
4 down in writing nor testimony as to oral standards that this
5 defendant is shown to have violated.

6 THE COURT: I have got the point. 2 to 8, is that
7 the same as 13 to 15?

8 MR. MURPHY: For my purposes, your Honor,
9 without going into more argument. I would say if you
10 wanted to draw a distinction, you might say that, depend-
11 ing upon the chronology of the loan, perhaps with repeated
12 exposure to Passarelli and repeated knowledge of Mr.
13 Passarelli and various documents, it might be reasonable to
14 a certain point in time and unreasonable to a time beyond
15 that, and that is the chronology.

16 But that is not the kind of thing that is the
17 sort of standard which is easy for the Court to apply,
18 although the Court is not limited to apply easy standards,
19 I know, but it applies to the standards in this case.
20 The argument runs as I laid it out.

21 THE COURT: Actually I gather that 13 and 15
22 merely restate 2 to 8.

23 MR. MURPHY: No, your Honor. 13 to 15 is the
24 Healy sort of loans. Those are Healy's friends with no
25 connection whatsoever with Passarelli. As far as

1 gwbr 70

2 my argument goes, it is the same. Those loans aren't really
3 part of the Passarelli combine even though Margaret
4 Fletcher's check was paid over to Mr. Passarelli. You
5 could look at them as kindof different wings of the same
6 problem.

7 For my purpose in making this argument, it
8 is the same.

9 THE COURT: I will hear from you.

10 MR. WEINBERG: On count 1, I think Mr. Murphy's
11 argument misconceives the law of conspiracy.

12 The government does not have to prove that the
13 two defendants on trial somehow sat down and organized
14 a criminal conspiracy. It is sufficient certainly for a
15 prima facie case that the conspiracy was among Mr. Passarelli,
16 Mr. Healy and Mr. Cleary to misapply bank funds or to file
17 false bank loan applications.

18 The fact that Mr. Passarelli and Mr. Cleary,
19 according to Mr. Murphy's account, did not actually sit
20 down and plan this is just irrelevant on the issue,
21 on the legal issue, as to whether there is a conspiracy.

22 I could analogize it to other criminal activity.

23 THE COURT: The three of us and Mr. Berger
24 certainly recognize that there is no necessity to have any
25 signed agreement. That is not the real issue.

1 gwbr 93

2 THE COURT: I am repeating myself. I find this
3 very difficult, to make a rational decision as to Count 1
4 as to Mr. Cleary. Maybe I am hung up the way Mr. Murphy
5 is about the issue of an agreement, but I don't think
6 so.

7 I don't have any problem with there being an
8 agreement between Mr. Cleary and one of the persons
9 that I am reasonably sure was a conspirator, Healy.
10 I don't have any problem with that. I guess my problem
11 is, as far as Mr. Cleary is concerned, the object of the
12 conspiracy and his stake. I suppose you are right, once
13 he agreed and embarked on this course with Mr. Healy,
14 I suppose his stake at that point was to keep the matter
15 going and keep it hidden from the bank officials, at least
16 keep Passarelli from going under and therefore protecting
17 his job.

18 I am sorry. A decision has to be made.
19 Although I have considerable doubt about it, I will deny
20 the motion to dismiss.

21 MR. WEINBERG: Your Honor, I know you have
22 ruled in the government's favor but I am concerned because
23 I believe that it is clear that the government has
24 established a conspiracy in this case and I am concerned
25 that your Honor has evidenced certain concern.

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gwlt 1

W I L L I A M H. C L E A R Y, the
defendant, called as a witness, having first been
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MURPHY:

Q May I have your date of birth, please?

A July 26, 1946.

Q Are you married?

A Yes, I am.

Q And when were you married?

A September 18, 1976.

Q Is your wife here in the courtroom?

A Yes, she is.

Q Did there come a time when you began work for
Barclay's Bank of New York?

A Yes, sir.

Q When was that?

A Approximately February, 1975.

Q And in what capacity?

A I came in as a trainee.

Q And did you have any training at the bank during
your time as a trainee?

A Yes. I did receive some training, yes.

Q And what was that training?

1 gwlt 2

Cleary-direct

2 A It was a familiarization session, finding out the
3 different procedures that the bank has, what their operation
4 entails. That was until approximately May.

5 Q So this familiarization proceeding went on from
6 February until May of 1975?

7 A That's about right.

8 Q And was that an informal proceeding or were there
9 formal classes as well?

10 A We had a formalized course in credit that was
11 given one, maybe two nights a week for about two months.

12 Q And what did that course consist of?

13 A It was a spin-off of an accounting course given
14 by -- I can't remember the name. It was taken from like the
15 American Bankers Institute. In order for an individual,
16 myself and a number of my peers who started around the same
17 time, to get some familiarization with financial statements,
18 balance sheets.

19 Q Did you have any part of that session on analyzing
20 credits?

21 A Yes, I did.

22 Q What did that consist of?

23 A A credit, in order to -- you are given a credit
24 in a situation.

25 Q What does a credit mean?

1 gwl: 3

Cleary-direct

2 A I am sorry. It was an account that the bank had
3 and it was given to myself and a number of my peers at the
4 time and we were supposed to make a decision based on the
5 financing information available whether to grant credit or
6 not. It was a day and a half problem, two evenings.

7 Q By day and a half, you mean two evening sessions?

8 A That's right.

9 Q And where were you located at that time?

10 Excuse me. I mean, during your trainee session.
11 Where was your office then?

12 A 491 Main Street. Really, I can't say that I had a
13 desk per se. When I said familiarization, I was directed to
14 find out as many areas and become familiar with as many areas
15 of the bank as I could.

16 The Installment Loan Department, which was in
17 Larchmont, the main office, 491 Main Street in New Rochelle,
18 which also was a main operation center that they had there,
19 a check center and other operating areas that made the bank
20 function.

21 Q Did you have practical training as well as formal
22 training that you talked about in your credit class during
23 your training period?

24 A The most that I was given to do, I was asked to be
25 a fill-in at the main office, if you mean that by practical

1 gwl 4

Clary-direct

480

2 training. If a branch officer at the main office in New
3 Rochelle was called away or on vacation, I would be a filler
4 or help at the Installment Loan desk.

5 Q Did there come a time after your trainee session
6 when you were assigned to any particular branch of the
7 Barclay's Bank of New York?

8 A Yes, there was.

9 Q And when was that?

10 A I would say approximately May, '75.

11 Q And where were you assigned?

12 A The main office, Westchester Regional Office, 491
13 Main Street, New Rochelle.

14 Q And who was your immediate supervisor, if anybody,
15 at that office?

16 A Mr. Flanagan.

17 Q And did you specialize in anything at that office?

18 A I was working in concert with an individual. This
19 was the Westchester regional head office and it meant that they
20 had a number of functions to do for the bank besides regular
21 branch activity. One of the areas that they had was a public
22 relations officer, and I worked very closely with him. I was
23 being groomed to take over his position.

24 Q What was the name of that public relations officer?

25 A William Burke.

1
2 Q Did you also have anything to do with Arnold
3 Distributors?

4 A Yes, sir.

5 Q Who are they?

6 A It is Arnold Bakery Products, Inc. Arnold is an
7 account of the bank. The relationship started through First
8 Westchester National Bank. They had an account with First
9 Westchester for a number of years and one of my functions
10 along with working in the branch and in the public relations
11 area was to be groomed to be the Arnold contact person.

12 Arnold had a wholesale-distributor set up. Arnold
13 Bakery has a number of people that they sell bakery products
14 through, and the best way I can explain it is it is almost the
15 same as Seven-Up or Coca-Cola.

16 The delivery routes that they have are looked upon
17 almost as entities that are sold or, really, Arnold is all
18 up and down the eastern seaboard where they distribute their
19 bakery products and they have routes up and down the same area.

20 What I was supposed to do would be as contact, and
21 Barclay's position, they would offer and they had offered their
22 facilities as a closing place the same as a mortgage closing for
23 new distributors that came in to sell Arnold products.

24 As the contact for Arnold or for Barclay's to
25 Arnold, I was groomed to be present at the closing as the bank

representative. Our position was we would lend money to a prospective person to buy a route.

I'm sorry, I'm not explaining it. It sounds like a long way around.

They said it was compatible to a mortgage closing. There is an awful lot of documentation that was entailed in one of these new routes that was taken over by a distributor. There was a price tag placed on this distributorship. The bank would finance an individual coming in say at a maximum amount of rent, \$12,000. As security for this, in order for us to give a loan to the distributor, we would ask that the route be defined and we would take that as collateral.

Once the loan was paid off, the distributor loan, we released the documents and the individual distributor would have title to this route.

There was a lot of documentation that was entailed in setting one of these up, and that was one of my functions. I had never been exposed to it before. I found it intriguing.

Q Did there come a time when you received a title at the bank at 491 Main Street in New Rochelle?

A Yes, sir.

Q And what was that title?

A Assistant manager, public relations officer to the bank.

1 gwl: 7

Cleary-direct

2 Q Was that assistant manager and public relations
3 officer?

4 A Yes, sir.

5 Q That is two different titles?

6 A Yes, sir.

7 Q And when did you become assistant manager and public
8 relations officer?

9 A Approximately July, '75.

10 Q This was July of '75?

11 A Right.

12 Q What were your duties as public relations officer?

13 A A public relations officer for Barclay's of New
14 York had a lot of things to do. It was brand new exposure for
15 me. To recount them --

16 Q Please keep your voice up.

17 A I am sorry.

18 Q Go ahead.

19 A The public relations officer's main thrust was
20 customer contact, customer service and bring in new business
21 for the bank. Customer contact, customer service was the same
22 as being assistant manager.

23 As public relations, besides the the customer
24 service area, I was in charge of press releases that the bank
25 wanted to make known as far as any promotions that they had

1 gwl 8

Cleary-direct

2 within the organization. They wanted to make them known to
3 the community. Any new branch openings, any items of interest
4 that we felt we wanted the community to know how we had been,
5 in effect, a part of the community and what we were doing to
6 help the community out. It was my job to get that across to
7 the public.

8 We had another part which was that anyone who was a
9 brand new customer that senior management held in high regard,
10 bank employees and/or officers, if they became ill or passed
11 away, I would make senior management aware of this and have
12 appropriate flowers or fruit or whatever sent to the families,
13 cards. I also was in charge of promotions, fund drives.

14 I was in charge of the overall bank effort for The
15 United Way, which would be the employees and the officers,
16 and I worked in concert with a loan executive from AT&T.
17 I think he was from AT&T.

18 We had about twenty branches in and about West-
19 chester County that I canvassed personally with cards and some
20 propaganda. I wanted to get across that I wanted our organi-
21 zation to contribute to The United Way, and we at least
22 doubled the contribution. I think we did extremely well.

23 I did the same for savings bonds. We had a savings
24 bond drive. I pushed that for all of our employees and
25 officers.

1 gwlt 9

Cleary-direct

2 I also had my vice chairman of Barclay's, previously
3 he was vice chairman of First Westchester National Bank, held
4 a position for a savings bond drive held -- he was the
5 chairman for a number of organizations in the New York City
6 area, Armonk, Westchester, Suffolk, Nassau, Putnam, Dutchess,
7 a little bit higher, but it was below Albany. He was the
8 chairman for a number of people in this area.

9 At the time he had it it was his turn to give a
10 luncheon, which he gave at the New York A.C. So it was my
11 job to work in concert with him and make sure this went
12 smoothly. It would be to invite the members of industry that
13 had contributed in the savings bond drive, AT&T, General Foods,
14 all the county executives, various city heads, people that
15 we wanted to have come to this luncheon and give them -- to
16 honor them for the work they had done to help out.

17 So that took some time just coordinating it.
18 Logistically, I would say it was very difficult. We had
19 pictures taken of a number of people in the Savings Bond
20 Division, giving awards out, and once we had that accomplished
21 then I had my photographer take the pictures. I had them
22 distributed to the newspapers and the individuals that were
23 on it. That's an idea of one area.

24 Another is First Westchester National for twenty-
25 five years previous had a flower show that they made for --

1 gwlt 10

Cleary-direct

2 well, they made it available for a number of flower clubs in
3 Westchester and the Bronx area. I would say we had around
4 eight to twelve clubs that participated each year.

5 The public relations officer, the job that I was
6 taking, not Mr. Burke, he subsequently came in, Mr. Ainsworth,
7 he had the position thirty years and he had run the flower
8 show by himself for that time. He passed away and I was the
9 first person to handle it besides Mr. Ainsworth. He had a
10 way of breaking it down as far as what we were supposed to do.

11 He would invite the flower clubs, be in touch with
12 all your chairmen of different clubs, set up a program. It
13 was at least 350 exhibits that we had in the main office.

14 Also, with this we gave a luncheon to the members
15 of the clubs that participated.

16 MR. WEINBERG: Your Honor, I hesitated to do this,
17 but I really don't see the relevance of all this detail.

18 MR. MURPHY: It is directly relevant.

19 I object to the interruption.

20 MR. WEINBERG: I refrained from doing it. I don't
21 see how all this detail is relevant to this case.

22 MR. MURPHY: It is relevant. It may not be for
23 the prosecution.

24 THE COURT: You may or may not agree with me, Mr.
25 Murphy, but I think the responses are somewhat discursive.

1
2 It appears to me if Mr. Cleary will answer the
3 questions succinctly, then you may proceed. But the responses
4 seem to be discursive.

5 Proceed.

6 MR. MURPHY: Your Honor, I can ask him a series of
7 leading questions pointing out various functions within here
8 if you wish, rather than have him just talk.

9 THE COURT: I thought you asked him about his
10 being the public relations officer and what the office entails.
11 It appears to me that he can tell us that without really going
12 into great detail about every function he had. He can indi-
13 cate what the function is. I think it can be done. You don't
14 have to lead him.

15 Just relax, Mr. Cleary, and attempt to listen to
16 the question and answer it as clearly and as fully but as
17 succinctly as you can.

18 All right.

19 Q In the course of your duties as public relations
20 officer, this is all in the time period between May, 1975,
21 and the end of 1975 --

22 A Yes.

23 Q -- did you also work on various ideas to increase
24 savings deposits and could you tell us what you did in that
25 area?

1 gwl: 12

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2 A Yes, sir.

3 I was given a directive of a program called a
4 Money Wheel, and I worked on this with a management consultant
5 after we had a group set up, in order to make this go, and
6 since we had the largest turn-over in the branch, my committee
7 became dispersed and I worked on it daily in concert with a
8 consultant for three or four weeks almost all the time.

9 It turned out that the fee the consultant wanted
10 to charge was over the bank budget, so that was it.

11 Q Did you also work on Bank Americard projects?

12 A Yes.

13 We became an agent for Bank Americard. First
14 Westchester at one time was a Master Charge agent, and they
15 proceeded to drop it and they contacted Chase and within 1975
16 we became an agent bank and we tried them.

17 In my job for new business and assistant manager of
18 the branch and public relations, I was directed to take care
19 of calls for the New Rochelle area and say in a three-day
20 span made over 75 calls, and then I had to coordinate pene-
21 tration that the branches within our system, how they did, and
22 compile that report and submit it to senior management.

23 We did fairly well.

24 Q Did you also handle board of directors and trust
25 committee and loan committee meetings for the Barclay Bank?

1
2 A Yes.

3 Each month a board of directors would meet at the
4 Westchester Regional Head Office in a conference room. At the
5 same time they had a loan review committee meeting and a trust
6 committee meeting. As public relations, my job was to set up
7 the arrangements for the people that were going to attend.
8 It would usually include the chairman and vice chairman of
9 the bank, maybe an individual from Barclay's of London.

10 I would set up a working lunch, cocktails in the
11 afternoon, at which time there would be a bartender and do
12 the hors d'oeuvres and set that up each different time. The
13 period would maybe be from 10 in the morning until 7, 8 at
14 night.

15 Q Barclay's had just merged with another bank at this
16 time, is that correct?

17 A Correct.

18 Q And what was the other bank?

19 A First Westchester National Bank.

20 Q And what was the new name of the merged entity?

21 A Barclay's Bank of New York.

22 Q What did you do about changing over the old bank to
23 Barclay's, if anything, as public relations director?

24 A My job was -- since First Westchester had been in
25 New Rochelle and Westchester for a number of years and what

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2 we wanted to get across is Barclay's name, and I feel I was
3 commissioned in that area to do everything possible to accom-
4 plish that, and I would sit and think of different ways to do
5 it.

6 One thing at board of directors meetings, I had
7 a number of -- I was introduced by the chairman of the bank
8 to a friend of his from Bronxville. I had glasses made up,
9 drinking glasses, with "BBNY," Barclay's Bank of New York,
10 etched on. It turned out rather well because just about all
11 of the senior management ordered the same glasses. They
12 thought that was a great idea.

13 We would use those for different cocktail parties,
14 economic news luncheons. Anytime we would throw buffets,
15 I would coordinate that.

16 Then we had the flower show.

17 Q I don't want you to go into things you have
18 already touched on.

19 A I am sorry. This is as far as putting Barclay's
20 name out into the public.

21 I had a jobber who came through and he gave me an
22 idea of flower pens. We had a flower show and we always saw
23 it as First Westchester. So I ordered flower pens, the normal
24 stick pen with a flower on the top. They were give-away
25 items but I had Barclay's of New York with a little motto and

1 qwlt 15

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2 it was something to get our name out there.

3 Along with that, I made sure that we had a number
4 of give-away items to civic organizations, service groups,
5 different clubs. I would always make sure we had key chains,
6 bags, pens, pencils, bridge pads. We made sure Barclay's was
7 on top, was out there.

8 We spared no expense in making sure that they got
9 out.

10 Q Youth Day in the bank, what was that?

11 A We wanted also, as I was saying, to give a good
12 impression of Barclay's. We wanted to be as helpful to the
13 community as possible and we contacted some organizations.
14 One was a grammar school in the area. We had them visit the
15 bank for a day, at which time I took one of my operating
16 people and myself, and since at the main office we had a num-
17 ber of things that would be of interest to younger children,
18 we showed them throughout the bank.

19 There was the check operations, the vaults, safe
20 deposit, wrapping coins. Once we had finished we would
21 bring them down to the cafeteria, set up and give them cake,
22 cookies, soda.

23 Q Did you also have anything to do with the cafeteria?

24 A Yes, sir.

25 Q What did you have to do with that, briefly?

1
2 A Yes, sir.

3 When I first started with the bank, I always
4 heard a number of detrimental comments concerning the cafe-
5 teria which had been set up maybe twenty years earlier as a
6 help to the employees so they wouldn't have to go out.

7 We had over 130 employees within the head office.
8 There was a cafeteria that was supposed to be self-sustaining
9 within the bank, but there were a lot of comments that it
10 wasn't worth going down there.

11 So I took it over. I had the place repainted
12 downstairs, had new menus made up by a friend that I had made
13 through the Kiwanis Club, gave some business over there. I
14 had new vendors bring in food, made sure that the vendors
15 were customers of the bank that had a lot to do with us.

16 One was not slow on paying loans, but he could
17 definitely do with the business. So, I made sure we had all
18 our food expenses through them.

19 Decorated the place for Christmas. Put in my stereo
20 system. I had a stereo system at home. I brought it in and
21 wired the place for sound. That was the cafeteria.

22 I paid the bills. We wanted to make sure -- I
23 wanted to make sure that the employees always had a place for
24 them to go, and we changed the atmosphere so it was worthwhile
25 to go down there. We didn't want to make any money on it.

1 We could get along very well on doing it but they didn't have
2 any direction before. So we had a person, a couple of people
3 down there in the cafeteria, that I said I took all the bills
4 from and proceeded paying them and gave them a sense of direc-
5 tion and I think communication with the bank, instead of just
6 being a dead segment as it was before.
7

8 Q The Kiwanis Club, what did you have to do with that?

9 MR. WEINBERG: Your Honor, I hesitate --

10 MR. MURPHY: He hasn't shown any hesitation at
11 all. He can make an objection without making comments.

12 THE COURT: I think that is correct.

13 MR. WEINBERG: Your Honor, my objection is the
14 length of the discussion on what I don't understand is the
15 relevance of each of the areas to the issues in this trial.
16 I have not been standing up on and objecting and Mr. Murphy
17 knows that.

18 THE COURT: I am going to allow it. I am going to
19 allow him to proceed.

20 Q Just briefly on the Kiwanis Club, what did you do
21 on that?

22 A I was asked to join the Kiwanis Club by senior
23 management, which I did. I was appointed public relations
24 publicity director for New Rochelle Kiwanis and also within
25 one of their drives I sold a lot of coloring books.

1
2 We had some \$3 coloring books and I sold about
3 fifteen cases and they said it was more than anybody in the
4 place had done, which I did this for Barclay's. That is what
5 I was doing.

6 I wanted to show Barclay's was interested in them.
7 They handled, had a Barclay's or First Westchester represen-
8 tative since Mr. Ainsworth had left the bank.

9 Q On new business, did you make calls in order to
10 bring new business into the bank in the form of deposits and
11 whatever, and what did you do about new business?

12 A I made a number of calls. The one that comes
13 readily to mind is when I first started with Barclay's I
14 saw they didn't have an account for the March of Dimes which
15 I had done business with previously and I contacted an indi-
16 vidual there by the name of Mr. White, who was the controller
17 financial vice president.

18 I felt one of my strong points is working in money
19 short term items, money market items, CD's, treasury bills,
20 certificates of deposit, treasury bills, commercial paper.

21 I ended up bringing about \$6,000,000 into the bank.

22 I am sorry. I ended up bringing about \$6,000,000
23 into the bank as new business through CD's with the March of
24 Dimes in \$500,000 lots.

25 About every other week I would bring in a CD.

1 I would deliver a bit to the organization and we were lucky
2 enough to get some business. I couldn't understand why
3 Barclay's hadn't done it before because I knew the March of
4 Dimes as a very cash-rich organization and they keep their
5 deposits with almost all banks within Westchester and New York
6 banks, and First Westchester and Barclay's did not attempt to
7 do it. So I stepped in and did it, for which I got a number
8 of favorable comments.
9

10 I made a number of business calls. I think we had
11 Brady Construction in New Rochelle. It had run into disfavor
12 in officials with Brady. They didn't like the way they were
13 handled. I met them through Mr. Burke, who was a public
14 relations fellow at Barclay's when I went there. I struck up
15 a good rapport with the controller there.
16

17 I did the same thing as far as money market items.
18 We had a couple of hundred thousand dollars in treasuries.

19 Q Did you attend any functions as Barclay's
20 representative? And please keep your voice up.

21 A Yes, sir.

22 As public relations officer I was asked or directed
23 to appear at a number of functions for the bank, civic func-
24 tions, police balls, fire department, honor dinners for dif-
25 ferent members of the community. They were having dinners and
I would run maybe along with the Kiwanis Club a couple of

2 dinners each week, maybe two or three nights each week.

3 I used to -- well, that is discursive..

4 Q Did you also do overtime work at new branch open-
5 ings and Saturday duties or whatever for Barclay's?

6 A Yes, sir.

7 Q What did that consist of?

8 A Along with putting the releases out to the press,
9 that we were having new openings of branches and Briarcliff
10 branch changed in Wykagyl. Wykagyl is in New Rochelle.
11 Briarcliff Manor is very close to Tarrytown. I think there
12 was one up in Poughkeepsie. I would go out, and I did it on
13 my own. I wanted to make sure Barclay's made a good
14 impression.

15 I would go out evenings or Saturdays, handed out
16 leaflets, open new accounts. I did that at least three months
17 of Saturdays and evenings.

18 Q Leaving aside public relations for a moment,
19 talking about your duties as assistant manager of the bank,
20 did you also have duties in that area as well as your public
21 relations work?

22 A Yes, sir.

23 Q What were your duties as assistant manager of
24 this particular branch of Barclay's Bank?

25 A As assistant manager I worked under Mr. Flanagan

1 and I was directed, as there were a number of people within
2 the branch proper, and he was the senior regional officer,
3 and he wanted me to take care of operational problems.
4 Operational problems would be to be in charge of the tellers,
5 safe deposit, savings bond desk, installment loan represen-
6 tative, new accounts desk, supply room downstairs, which had
7 their own printing shop, a couple of sections.
8

9 I also did salary reviews. Along with Mr. -- right
10 next to Mr. Flanagan was a chap by the name of Mr. Denton who
11 was the mortgage officer for the bank. He was in a branch
12 location, but he being mortgage officer and I being public
13 relations, that is how come we had some kind of step-over onto
14 the full bank scene in deference to just a plain branch. We
15 had bank functions as well as branch functions.

16 Mr. Denton was the mortgage officer and I was
17 called on when Mr. Flanagan would be asked to -- he was in
18 London for some time. When he was on vacation or when Mr.
19 Denton would be on vacation, I was groomed to do the mortgages
20 for the bank. I haven't any exposure in that. I would go out
21 with an appraiser commissioned by the bank to look over the
22 property, take applications in from all twenty branches in
23 the bank, scrutinize them as much as possible, follow the
24 procedure I had been directed to.

25 I did that. I guess in total maybe a month or so

1 later in the summer -- well, it was in the summer or fall.

2
3 My phraseology, because of the way I remember it,
4 I was to be a buffer between Mr. Flanagan and the rest of the
5 branch in order to make sure the work flow went smoothly. If
6 there were any problems with old customers who came in --
7 First Westchester was there fifty years. We had customers for
8 fifty years. Barclay's had come in a year ago at that time.
9 My position was they had these people in Barclay's or First
10 Westchester for a number of years, customers were used to
11 seeing them, the same people all the time. All of a sudden
12 there was a big turn-over. I was commissioned to make sure
13 these customers were taken care of, they didn't have the same
14 contact as they had before.

15 I would help on loan applications, reserve service
16 charges, whatever would be needed in order to treat these
17 people, to know that First Westchester, even though it had
18 changed the name to Barclay's, Barclay's was even a better
19 service organization and was there to help them, it was
20 essentially the same bank, maybe a few new faces, but just as
21 good, if not better.

22 Q Did you also work on arranging schedules for night
23 work and overtime and whatever?

24 A Yes.

25 Q What did you do on that?

1 gwlt 23

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2 A The same. It would be operational problems of
3 tellers. We would be open one night a week. I made sure
4 that at least I was there. We would have a night opening
5 until night and I would stay around and do extra work even
6 though I didn't have to.

7 Q What did you have to do with the Installment Loan
8 Department, if anything?

9 A Take in applications, that's about it.

10 Q Did you also handle payroll and salary review for
11 certain of the employees of the bank?

12 A Yes, sir.

13 As Mr. Flanagan's buffer, I had a number of tellers.
14 The tellers are a group of eight to ten people, a head teller
15 cage and a safe deposit room, and my cafeteria room and my
16 people down in the supply area, Installment Loan representa-
17 tive, a new account clerk. I had a lot of people.

18 Then I would review it with Mr. Flanagan, but he
19 would ask me as far as performance by these people since I
20 was really in contact with them.

21 Q Did you also handle vendors for various items?

22 A Yes.

23 Q Briefly, what did you do in that area?

24 A I was contacted almost daily by vendors about
25 give-away items, promotional gimmicks. We would give business

1 to people who had deposits with us or based on an idea -- if
2 it was a great idea we would go along with it, but I was
3 hit upon -- when I say hit upon, I mean really badgered by
4 a number of people with a parade to your desk of going over
5 and trying to sell items. I had one fellow who was a branch
6 depositor for a number of years who came in daily and would
7 sit at your desk and talk about nothing else but to show you a
8 new idea.

9
10 Q Did you also work on projects for Mr. Flanagan?

11 A Yes, sir, whenever directed.

12 Q What was your credit line for Barclay's at the time
13 you received this title of public relations manager and
14 assistant manager, public relations officer?

15 A 5,000 secured and it was 10 or 15 thousand --
16 5,000 unsecured, 10 or 15 thousand secured.

17 Q What is meant by 5,000 unsecured and 10 or 15
18 thousand secured, to your understanding?

19 A 5,000 unsecured means that it is within my judgment
20 to grant a loan for \$5,000 without any collateral security
21 and grant a loan for 10 or 15 thousand secured by collateral,
22 marketable securities, passbook, treasury bills, bonds, what-
23 ever is a marketable security.

24 THE COURT: Is it your testimony that you were
25 authorized to approve on your own with collateral security

1 gwl 25

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2 any borrowing between 10 and 15 thousand? Is that what your
3 testimony is?

4 MR. MURPHY: Excuse me. I can't hear you back
5 here. It could be that the jurors can't hear you either.

6 THE COURT: I suppose that is true.

7 I tell everybody else and I forget myself.

8 I wanted Mr. Cleary to clarify for me that his
9 testimony was he was able to make loans of 10 to 15 thousand
10 dollars secured by collateral without the necessity of
11 approval by anyone else at the bank.

12 THE WITNESS: Correct.

13 Q Excuse me, Mr. Cleary?

14 A Correct.

15 Q And where did you get that \$5,000 unsecured and
16 10 or 15 thousand dollars secured authority?

17 A The same time that I became assistant manager,
18 approximately July.

19 Q Of '75?

20 A '75.

21 THE COURT: You were told this, that you were
22 authorized to do it by whom?

23 THE WITNESS: Mr. Lambert.

24 THE COURT: He told you?

25 THE WITNESS: No, he gave me a letter. Sent me

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letter.

MR. MURPHY: We are having trouble hearing back here.

THE WITNESS: I was sent a letter by Mr. Lambert, who is President of Barclay's of New York.

MR. MURPHY: We don't have the letter at this time. If the government has it, I ask them to turn it over to us.

MR. WEINBERG: I don't have it, your Honor.

Q You saw Cleary Exhibit B marked in evidence and heard Mr. Flanagan discuss or identify that booklet, is that correct?

A Yes, sir.

Q Did you know of the existence of that booklet while you were at Barclay's?

A I saw it before. I know I didn't have one. I saw it before.

Q What was your contact with that booklet, if anything?

A When I passed through the Commercial Loan Department, there was one there. I don't remember that much, but I am sure that it was there.

Q Do you recall whether you yourself had a copy of the booklet?

A No, sir, I did not.

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Q All right.

Did Mr. Flanagan discuss procedures to be followed by you in exercising credit decisions to be made by you as an officer of Barclay's?

A Initially, yes.

Q And by that you mean when?

A When I first started down at the branch.

Q What was your understanding of the standards to be followed by you in exercising your discretionary authority?

A My standards?

Q Yes.

A Ability to repay.

Q And besides ability to repay, what, if anything?

A I had standards that I had followed. Mostly, was the ability of the individual or corporation to repay. As far as installment loans, I usually go 10 percent of an individual's gross for a year, 20 to 25 of his gross similar for two years, and up to 35 percent for three, the three years.

As long as the individual showed means and was going to repay me, that's what I wanted.

Q By "individual," you mean whom?

A The individual who was applying for credit.

Q Mr. Flanagan was your supervisor, is that right, during this period you were assistant manager of this branch?

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A Correct.

Q And can you tell us what sort of supervision he did of you, if you can, or talk on that subject?

A I was directed, as I said before, to make sure the branch ran smoothly. Lending was mostly discretionary. It would be left up to my discretion.

Q About how many loans did you make pursuant to your discretionary authority at the time you were there?

A It is kind of hard to recall. It's very difficult to recall. I am sure it was over fifty.

Q Was making loans -- withdrawn.

Can you say about how many hours a week you would spend working on loan applications?

A Very nominal.

Q Very nominal?

A Yes.

Q What does that mean -- not very many hours?

A Yes, sir.

Q About what percentage of your time was spent on public relations work vis-a-vis your duties as assistant manager in the bank?

A Public relations to assistant manager?

Q Yes, in percentages. Fifty-fifty or whatever.

A Seventy-thirty. Seventy per cent public

relations, thirty per cent assistant manager.

Q Did there come a time when you met Jerome Healy?

A Yes, sir.

Q Were you told by Mr. Healy about his background and whatever about himself?

A I was informed by Mr. Healy that he was an attorney, he lived in Larchmont, New York.

I am trying to think of subsequent conversations. I found out from Mr. Healy he was a member of Wing Foot, Westchester Country Club in subsequent conversations, not the initial; his father was president of the New York A.C. He seemed to have very good grasp of credit understanding.

Q Had you had experiences with attorneys and their reputations in your business and personal life before meeting Mr. Healy?

A Very much so.

Q What was your opinion of attorneys?

MR. WEINBERG: Objection.

MR. MURPHY: It goes to intent, your Honor, one of the issues in this case.

THE COURT: Do you withdraw your objection?

MR. WEINBERG: No.

THE COURT: Objection sustained.

Q Had you had attorneys in your family?

2 A Yes.

3 Q And what attorneys did you have in your family?

4 A I had my uncle, Ward Cleary, my father's brother,
5 a member of Curtis, Barrett & Brinkerhoff in Stamford,
6 Connecticut. He was also on the board of directors of
7 the Fidelity Bank & Trust, a bank I worked with through
8 my high school and when I was working through college. He
9 was quite an individual. He teaches law at Fordham Law,
10 Connecticut Law and Fordham Law School.

11 My father's sister's husband, whose name is E.
12 Gaynor Brennan. He passed away a couple of years ago.
13 He had his own law firm. He was an attorney. His law
14 firm was Brannan, Dieter and Brennan in Stamford. An
15 outstanding individual. I placed an awful lot of trust
16 in his people and his judgment.

17 Q Did you have a contact with Mr. Healy at the
18 Barclay's Bank?

19 A Correct.

20 Q And when was your first contact with him at
21 that bank?

22 A Approximately May, '75.

23 Q What happened then?

24 A He came into the bank and he said that he had
25 heard that I was working at Barclay's and wanted to make

1 gwlt 31

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2 application for a loan, if I could approve it for him.

3 I said I had no credit authority and if he
4 wanted to have a loan he should take it through other
5 channels within the bank.

6 Q Did there come a time when you had another con-
7 tact with Mr. Healy?

8 A Yes, sir.

9 Q When was that?

10 A Late summer, '75.

11 Q What happened then?

12 A Mr. Healy came into the bank and said that he
13 had a loan application and that he wanted to see if I
14 could process it. Mr. Healy was aware of my credit stand-
15 ards that I had exercised. I looked on Mr. Healy as
16 being a screen as far as an individual who could understand
17 a credit situation.

18 I think that loan was Mary Roccario. He said
19 it was for some repairs to her home. I approved the loan.

20 Q By a screen, what do you mean?

21 A An individual that understood a credit situation.
22 I had talked to Mr. Healy. He said he might have an
23 application that he wanted to bring in.

24 I said, "You understand the credit standards
25 I would expect them to meet."

1 The credit standards to me obviously would be
2
3 that the loan would be paid back, it would be an upright
4 individual and if the loan wasn't paid back, the individual
5 didn't meet those qualifications, forget bringing it in to
6 me . And he would vouch for the validity of the applica-
7 tion. I can't --

8 Q Please try to testify --

9 A On attorneys, trust in attorneys. I have
10 attorneys throughout their bank experience who would bring
11 in estate accounts, trust accounts, and have them bring
12 in documentation. I don't see the trustee, don't see
13 the -- CPA's, attorneys --

14 MR. WEINBERG: Your Honor, he is not testifying,
15 he is not answering questions. He is making speeches.

16 THE COURT: That is right. Objection sustained.

17 MR. MURPHY: Fine, your Honor. I wanted to
18 try to relax him on the stand. I thought he was getting
19 upset.

20 THE COURT: I understand that. Maybe what we
21 ought to do, it's about time anyway, let's take a ten-
22 minute recess.

23 (Recess.)

24 (Jury not present.)

25 THE COURT: What can I do for you?

1 gw:mq 18

Cleary-direct

2 THE COURT: All right, I will leave you at
3 the bench.

4 (At the side bar)

5 MR. MURPHY: The point is when he learned
6 certain facts. The FBI talked about him learning certain
7 facts in a statement he made to them. I wanted to bring
8 out when he learned facts about Mr. Passarelli and other
9 people. He learned about it during the course of the
10 collection. That is what I meant by state of mind.

11 MR. WEINBERG: He can do that by asking
12 Mr. Cleary about specific conversations that he may have
13 had with Mr. Passarelli. He doesn't have to go into the
14 background as to why he was having a conversation with
15 Mr. Passarelli.

16 THE COURT: He had some conversation with
17 Mr. Passarelli, is that what you want?

18 MR. MURPHY: Yes, your Honor. The first time
19 he met Mr. Passarelli and what was said to him by
20 Mr. Passarelli.

21 THE COURT: You can ask him when he met him.
22 When did he first meet him, and so forth. I think you
23 can ask him that. I started to say you could ask him
24 when he met other people but I suppose you wouldn't
25 want to ask that question.

1 gw:mq 19

Cleary-direct

2 You can ask him did he meet Mr. Passarelli,
3 when he met him, and did he have a conversation with
4 him.

5 MR. MURPHY: All right.

6 (In open court)

7 BY MR. MURPHY:

8 Q When did you first meet Mr. Gustavo Passarelli,
9 the defendant here on trial with you?

10 A Right after I was commissioned by the bank,
11 directed by the bank, to collect the loans.

12 Q And where did you meet Mr. Passarelli?

13 A His place of business in Port Chester.

14 Q And did you have a conversation with Mr.
15 Passarelli about certain of the facts with respect to the
16 named borrowers on the loans that you had made?

17 A With the knowledge that I had at hand, I ex-
18 plained to Mr. Passarelli my situation. I said that
19 I was directed by the bank to ask for complete payment for
20 all the loans.

21 Q And then what else was said, if anything?

22 A He said that all the loans were good that
23 were made, that he had acknowledged the debt.

24 Q Anything else?

25 A He said some things about Mr. Healy.

1 gw:mg 23

Cleary - direct/cross

2 MR. MURPHY: It is directly relevant to the
3 defense in this case.

4 THE COURT: Mr. Murphy, you and I disagree.
5 The objection was sustained before. I sustain it now.

6 MR. MURPHY: May I approach the bench now?

7 THE COURT: No, you may not approach the
8 bench. I know what the letter says and I sustain the
9 objection.

10 Now move on.

11 Q Did you receive any money from the borrowers
12 that were named on these loans or from Mr. Passarelli
13 or from his corporation or from Jerome Healy or anybody
14 else in connection with the granting of these loans?

15 A No, sir.

16 Q Not a penny?

17 A No, sir.

18 MR. MURPHY: No further questions.

19 THE COURT: Mr. Berger, any questions?

20 MR. BERGER: No, sir.

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 BY MR. WEINBERG:

24 Q Mr. Cleary, on your direct examination you
25 testified that a stereo set of yours you donated to the

A I know a situation was presented to me with the name of Margaret Fletcher, a previous bank depositor, an individual longstanding in the community --

Q Mr. Cleary, was a loan application completed in the name of Margaret Fletcher?

MR. MURPHY: If he would say oral loan application versus written loan application perhaps --

Q Is it your understanding under bank procedure a loan application is supposed to be in writing?

A No, sir.

Q That is not your understanding?

A It depends on the loan.

Q If it is an installment loan?

A Yes, sir.

Q And if it is a time loan for a business, it is supposed to be in writing unless you have had previous experience with the borrower, isn't that correct?

A Could you please repeat?

Q Aren't all loan applications supposed to be in writing except a business loan where you have had previous experience with the borrower?

A No, sir.

Q That is not your understanding?

A Because you can have individuals getting time

1 gw:mg 57

Cleary-cross

2 loans that can be through oral understanding. It would
3 be up to the discretion of the lending officer under his
4 guidelines -- I am sorry -- if I am being --

5 Q Unless you had previous experience with the
6 person borrowing the money, isn't that correct?

7 A It would be up to the discretion of the loan
8 officer.

9 Q Wouldn't it be an abuse of the loan officer
10 to loan money without meeting the borrower or having
11 previous experience with the borrower?

12 A I don't believe so.

13 Q You think it is appropriate at a bank to ap-
14 prove loans for individuals where the bank officer has
15 not met the individual and has had no prior experience
16 with that individual?

17 MR. MURPHY: Objection as to time, your Honor,
18 whether he thought so at the time or now.

19 Q In December of 1975.

20 A In December of 1975, when I was instructed by
21 the bank to collect all these loans.

22 Q Before the bank found out about all these bad
23 loans, did you know then that before approving loans you
24 were supposed to either meet the borrower or have had at
25 least some prior experience with that borrower?

1 gw:mg 53

Cleary-cross

2 MR. BERGER: May it please the Court --

3 THE COURT: Are you objecting?

4 MR. BERGER: I object to the use in the ques-
5 tion of the word "bad loans."

6 THE COURT: The objection is overruled.

7 A I gave these loans upon recommendation --

8 Q Mr. Cleary --

9 THE WITNESS: I am sorry. I didn't answer the
10 question.11 THE COURT: The question is: What was your
12 understanding as to whether you were supposed to have had
13 either prior experience with the borrower --

14 THE WITNESS: Individually, sir.

15 THE COURT: Yes. That was while you were
16 making loans, in order to make a loan to him on oral ap-
17 plication -- is that what you are saying?18 MR. WEINBERG: Approving a loan before the
19 written application is filled out.

20 THE COURT: That is what the question is.

21 A It is a procedure that you can follow, yes.

22 Q Isn't it a procedure you are supposed to
23 follow?24 A I do not believe that it is that strong that
25 one must follow that.

1 gw:mq 59

Cleary-cross

2 Q You approved these loans based solely on recom-
3 mendations made to you by Jerome Healy, is that correct?

4 A Correct, sir.

5 Q And you found out on October 9th or 10th, 1975,
6 that Jerome Healy had an extensive what we have been
7 calling a TRW, is that correct?

8 THE COURT: He already answered that question.
9 You asked him that question before. He has answered that.

10 Unless you are going to develop it, there is,
11 no use asking him the same question over and over again.

12 Q Mr. Cleary, on the loan to Edward Hogan, no
13 financial application was submitted for that loan, was
14 there?

15 A I don't believe so.

16 Q You never met Mr. Hogan, is that correct?

17 A I was supposed to.

18 Q You did not meet him, is that correct?

19 A Correct. I did --

20 Q Weren't you supposed to meet Mr. Hogan because
21 that was proper bank procedure, to meet the person you
22 were lending the money to?

23 A Mr. Healy said Mr. Hogan would be coming into
24 the bank.

25 Q But you did not meet Mr. Hogan?

1 gw:mq 67

Cleary-cross

2 not your understanding.

3 Proceed.

4 Q Mr. Cleary, you testified that you didn't
5 believe there was anything wrong with these loans, is
6 that correct?

7 A Correct.

8 Q If you had been offered anything such as
9 money, that would have alerted you to the fact there was
10 something wrong with what you were doing, is that correct?

11 A It would have, yes.

12 Q Did you have a conversation with the bank of-
13 ficial after the bank found out about these loans in
14 which you told the bank official that Mr. Healy had offered
15 you money and women--I am sorry, your Honor, I will with-
16 draw that.

17 Mr. Cleary, didn't you have a conversation
18 with a bank official, when the bank discovered these loans,
19 in which you told the bank official that you had been
20 offered money and women in connection with giving these
21 loans?

22 A I'm not sure of the time of the discussion.

23 Q Some time in the latter part of December, 1975,
24 did you have a conversation with William Albert, auditor
25 from the bank, in which you told Mr. Albert that you had

gwrn 2

Cleary-recross
Rabasca-direct

2 A No, sir.

3 MR. BERGER: No further questions.

4 MR. WEINBERG: Nothing else, your Honor.

5 THE COURT: All right, thank you, Mr. Cleary.

6 You may step down.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MR. MURPHY: The defense rests, your Honor.

10 MR. BERGER: Julia Rabasca.

11 J U L I A R A B A S C A , called as a witness by the
12 defendant Passarelli, being first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BERGER:

16 Q My name is Mr. Berger and I represent Mr.
17 Gus Passarelli. Do you know Mr. Passarelli?

18 A Yes, I do.

19 Q Do you see him in the courtroom today?

20 A Yes, I do.

21 Q Miss Rabasca, where are you employed?

22 A I am employed at the Rye office of Barclay's
23 Bank of New York.

24 Q How long have you been employed there?

25 A At the Rye office?

gwrn 3

Rabasca-direct

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Q Yes.

3

A I have been at the Rye office since 1961.

4

Q And what position do you currently hold at the

5

Rye office?

6

A Assistant cashier and manager.

7

Q And how long have you held that position?

8

A I would say about eight years.

9

Q Do you know Gus Passarelli as a customer of

10

the bank?

11

A Yes, I do.

12

Q Did there come a time that you acted in the

13

capacity of his loan officer?

14

A Yes.

15

Q When did that occur?

16

A I think it was about 1972.

17

Q Did Mr. Passarelli have more than one corpora-

18

tion at the bank which dealt with you?

19

A Yes.

20

Q Now, from 1972 to 1973, did you on occasion

21

loan money to Mr. Passarelli and various of his corporations?

22

A Yes, I did.

23

Q Did you loan money to individuals for whom Mr.

24

Passarelli co-signed?

25

A Yes, I did.

1 THE COURT: I suppose we ought to make this
2 accurate. I do not assume she lent any money, she approved
3 loans of the bank's money.
4

5 Q Did you approve loans of the bank money to Mr.
6 Passarelli for various of his corporations?

7 A Yes, I did.

8 Q Did you approve loans of the bank's money for
9 various individuals for whom Mr. Passarelli signed?

10 A Yes, I did.

11 Q From 1972 to 1973, approximately how much money,
12 of the bank's money, did you authorize to be loaned to
13 Mr. Passarelli and various of his corporations?

14 A I am sorry. I didn't get the year.

15 Q 1971 to 1973 or 1972 to 1973.

16 THE COURT: Ask one or the other.

17 Q Do you recall whether you made any loans in 1971?

18 A I don't believe in '71, no.

19 Q Then from 1972 to 1973, approximately what
20 amount of money was loaned by the bank to Mr. Passarelli
21 and various of his corporations and individuals for whom he
22 co-signed that you know of?

23 A I don't have the exact figure.

24 Q Can you give us an approximation?

25 A You are giving me in one year?

gwrn 5

Ralasca-direct

617

Q No, over a period of '72 and '73.

A '72 and '73?

Q Yes.

A I would say maybe 20, 25 thousand dollars.

Q And did that include monies that were loaned to individuals for whom he co-signed?

A Yes.

Q Did any of those individuals for whom he co-signed default in the repayment of their loans?

A Some of them did.

Q Did Mr. Passarelli repay all of the money he borrowed, his corporations borrowed and the individuals borrowed for whom he co-signed?

A Yes, over an extended period.

Q Were there times that Mr. Passarelli was delinquent in the payment of his loans?

A Yes, there were a few times.

Q A few times. And how long a period of time would he generally be delinquent for?

A Ten days to possibly -- ten to twenty days, I would say.

Q As assistant cashier of the bank, are you familiar with the bank's policy with regard to lending limits placed upon certain officers of the bank?

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A Yes.

Q If an officer has a lending limit of \$5000, does that mean that he cannot loan \$5000 each to various corporations that might be owned by one stockholder?

A I am sorry. Would you repeat that again for me?

Q Yes. If a lending officer has a loan limit of \$5000 per loan, is he restricted from loaning \$5000 to various different corporations which happen to be owned by one individual?

A No.

Q Does the Barclay's Bank have forms for financial statements as well as loan applications?

A Yes, we do.

Q Are the two different?

A Yes.

Q Are there circumstances under which an individual or corporation can borrow money from the bank by putting in a financial statement and an oral loan application?

A The corporation would put -- would submit a financial statement and an oral conversation could take place with the officer.

Q In other words, loan applications or the request to borrow money need not be in writing; is that correct?

1
2 A That's right, if you are talking about commer-
3 cial loans, yes.

4 Q On a time loan, however, what would be the
5 procedure of the bank?

6 A To a corporation?

7 Q Or an individual.

8 A We would -- if it is an individual, we would
9 have him fill out a personal financial statement.

10 Q And what about an application?

11 A An application as such we use when we give
12 installment loans.

13 Q Therefore, on an installment loan there would be
14 a written application in addition to a financial statement?

15 A No. We would take the installment loan appli-
16 cation in lieu of the financial statement.

17 Q In other words, the application would be a
18 combination of a financial statement and application in the
19 case of installment loans?

20 A To a degree. A financial statement goes into
21 more detail as to the individual's assets and liabilities.

22 Q I show you what has been marked in evidence as
23 Government's Exhibit 5, a financial statement, and ask you
24 whether that is an application or request for a loan.

25 A No, this is a personal financial statement.

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gwrn 8

Rabasca-direct

620

Q And the application would be probably made orally; is that correct?

A If an individual came in for a loan, yes.

Q Does Government's Exhibit 5 indicate that 8626 Realty Corporation has applied for a loan?

A Looking at this particular one?

Q Yes.

A No.

Q Did there come a time in 1973 that Mr. Passarelli asked for an increase in his floor planning limits at the bank?

A I do not handle the floor planning. I set up an appointment with Mr. Passarelli and whoever is in charge of the floor planning.

Q Had Mr. Passarelli asked you to set up an appointment so he could increase his floor planning?

A I don't know if that was the reason, but I do know an appointment was set up.

Q An appointment was set up for what?

A For Mr. Passarelli to set up with the officers who handle that.

Q Do you know why he wanted to meet with them?

A I don't recall.

MR. WEINBERG: Objection, your Honor.

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THE COURT: She does not know anyway.

Q Do you know an individual by the name of Milton Kavey?

A Yes.

Q Who is Milton Kavey?

A Vice president of Barclay's Bank and was on the Board of Directors of First Westchester.

Q Is he vice president of a particular branch?

A His title is vice president and he is in charge of a branch, yes.

Q Is he different than the ordinary vice president in each branch?

A Well, he was a member of the Board of Directors.

Q Did there come a time in 1973 that Mr. Kavey had a discussion with you with regard to Mr. Passarelli?

A I do recall Mr. Kavey calling me, yes.

Q And do you recall what Mr. Kavey said to you?

A I don't recall the complete conversation.

Q How much of it do you recall? Would you please tell the Court and jury how much of the conversation you do recall.

A I recall Mr. Kavey calling me and just alerting me to watch the account.

MR. BERGER: Thank you. No further questions.

1 gwrn 10

Rabasca-cross-redirect

622

2 THE COURT: Mr. Murphy, do you have any ques-
3 tions?

4 MR. MURPHY: No, your Honor.

5 MR. WEINBERG: Very briefly.

6 CROSS EXAMINATION

7 BY MR. WEINBERG:

8 Q Miss Rabasca, let me direct your attention to
9 May or June of 1975.

10 Did you have a conversation with Mr. Gustavo
11 Passarelli in which you informed him that you were closing
12 out his bank account at the Barclay's Bank?

13 A Yes.

14 Q At the time that you told him you were closing
15 out his bank account, did your branch have a problem with
16 Mr. Passarelli in that he was drawing checks on uncollected
17 funds at your bank?

18 A We did have some unsatisfactory condition with
19 the account, yes.

20 MR. WEINBERG: No other questions, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BERGER:

23 Q Miss Rabasca, when Mr. Passarelli overdrew his
24 account, would you call him and tell him that his account
25 was overdrawn?

gwrn 11

Rabasca-redirect

Giuseppi Passarelli-direct

1 A Yes.

2 Q What would he do?

3 A If possible, he would come in and make a deposit.

4 Q And generally, how long did it take him after
5 you called him to make the deposit?

6 A He would be in before the bank closed at 2:30.

7 Q Same day, is that correct?

8 A Yes, sometimes.

9 Q And when you closed his account, did he owe the
10 bank any money?

11 A No, he did not.

12 MR. BERGER: No further questions.

13 THE COURT: Thank you very much.

14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MR. BERGER: Giuseppi Passarelli.

17 G I U S E P P I P A S S A R E L L I , called as a
18 witness by the defendant Passarelli, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BERGER:

22 Q Mr. Passarelli, are you related to Gus Passarelli?

23 A Yes.

24 Q What is your relationship?

1 gwrn 67

Gustavo Passarelli-direct

2 THE COURT: Even without regard to the basis
3 for his problems, the question was that he was not able to
4 do it on his own. So that is the issue.

5 MR. BERGER: That he had bad credit, though.

6 THE COURT: I think that will lead us into an
7 area that has no business in this case.

8 MR. BERGER: Yes, your honor.

9 THE COURT: You put it on the record. It is on
10 the record.

11 MR. BERGER: May I add to the record for one
12 second? In '73, when Mr. Passarelli made an application to
13 increase his floor planning from 25, I think, to 50,000 is
14 when his floor planning was pulled and he was told to pay
15 up. At that time Mr. Kavey said, "Now we're even."

16 (In open court.)

17 BY MR. BERGER:

18 Q Mr. Passarelli, when is the first time you met
19 Mr. Cleary?

20 A December 22.

21 Q What year?

22 A 1975.

23 Q Did you have a conversation with him?

24 A Yes.

25 Q What did he say to you and what did you say to

1 gwrn 121

2 application, I am not going to use any illustrations at all.
3 I am probably going to have to talk in general always
4 because I don't plan, if I can avoid it, to make any
5 comments on the evidence in the case. I may but I don't
6 think I will.

7 MR. MURPHY: I object in request No. 10 that
8 the defendant made any misrepresentation of a relevant
9 fact or omitted to state any relevant information about
10 his prior experiences with the borrower. You may consider
11 this fact in determining whether the government has estab-
12 lished this element of the offense.

13 This language in general that the bank was being
14 placed in jeopardy of loss, that is intrinsic with the
15 granting of any loan. It is too simplistic to be a proper
16 definition of this, especially in light of the cases I have
17 cited and the language I have cited. That is as to No. 11.

18 MR. WEINBERG: Should I comment, your Honor?

19 THE COURT: No.

20 I think actually, Mr. Murphy, it is a waste of
21 time. I think you are going to have ample opportunity.
22 You should wait and hear my charge and then you will be in
23 a position to make more concrete objections.

24 MR. MURPHY: Your Honor, the purpose for my
25 making objections now is because the Court's charge is very

1 gwrn 122

2 important to me both in the summation and for the jury.
3 do not want it to be corrected after you get it. I would
4 much rather that your Honor gives it taking into considera-
5 tion whatever I have to say beforehand and rather than a
6 long list of objections thereafter because I really don't
7 think that objection does anywhere near as much good as an
8 objection at the right time. I ask you to take into
9 consideration what I have offered.

10 I object to the Pinkerton charge here because,
11 in effect, the Pinkerton charge focuses on the conspiracy
12 when really the focus of this whole case focuses on the
13 substantive charge in this case, and I would object to the
14 Pinkerton charge which in effect lets the government prove
15 this case backwards where the whole theory of the case has
16 been substantive charges. What the jury should be focusing
17 on is the misapplication.

18 THE COURT: All right. I think the government
19 is entitled to it.

20 MR. WEINBERG: Your Honor, you are going to
21 give the Pinkerton charge?

22 THE COURT: I think you are entitled to it and
23 I propose to give it, yes.

24 MR. BERGER: I join in the objections of Mr.
25 Murphy. In addition to that, I don't know if your Honor has

1 gwrn 19

2 MR. WEINBERG: Nothing else, your Honor.

3 THE COURT: I will excuse the jury for a short
4 time.

5 (Jury leaves the courtroom.)

6 THE COURT: I suppose you ought to make your
7 record complete and then we will go into summation.

8 MR. MURPHY: On behalf of the defendant William
9 Cleary I move for a directed verdict of acquittal on each
10 of the counts with which he is charged on the ground on the
11 evidence no reasonable man or reasonable jury could find beyond
12 a doubt as defined in law Mr. Cleary guilty of each of
13 those counts or any one of them. I refer to the argument
14 that I made when the government rested on its direct case
15 for supporting legal authorities and I move for such a
16 verdict by your Honor.

17 THE COURT: The motion is denied.

18 MR. BERGER: Your Honor, the defendant Passarelli
19 moves for a directed verdict of acquittal on each and
20 every count due to the fact that on the evidence no
21 reasonable man could find him guilty beyond a reasonable
22 doubt.

23 THE COURT: The motion is denied. I am going
24 to call the jury back and you can --

25 MR. WEINBERG: Your Honor, could I go outside

1 gwrn 20

2 for a drink of water? It will just take a second.

3 THE COURT: Sure.

4 (Pause)

5 THE COURT: All right.

6 MR. WEINBERG: May it please the Court, Mr.
7 Murphy, Mr. Berger, Mrs. Williams, ladies and gentlemen of,
8 the jury:

9 As I begin my summation I want to first, on
10 behalf of the government, thank you for your service as
11 jurors. Our system, our legal system, our system in which
12 we judge guilt and innocence of defendants depends vitally
13 on citizens like yourself who are willing to take the time
14 out to serve as jurors and to listen conscientiously to the
15 evidence that comes from the witness stand and the documents
16 that are received as evidence. It seemed apparent in the
17 course of the trial you have listened carefully and the
18 government thanks you for your conscientious attention.

19 The purpose of my summation now is to review
20 the evidence with you, to review the evidence that you have
21 heard over the past week and two days. After I am completed,
22 defense counsel, Mr. Murphy and Mr. Berger, will have an
23 opportunity to address you, and then I will have an oppor-
24 tunity to address you for a brief period of time in order
25 to make a rebuttal to certain specific arguments that

1 gwrn 21

2 counsel for the defendants raise.

3 The defendants in this case are charged with
4 conspiracy, specifically, with a conspiracy to misapply
5 bank funds, and to file false loan applications with the
6 bank.

7 The defendants are also charged with the actual
8 misapplication of bank funds and with the filing of false
9 loan applications.

10 You have heard about this case and the evidence
11 has come from the witnesses. It has come to a large extent
12 through the testimony of Jerome Healy, a participant in the
13 crime. You heard testimony from an individual who has come
14 into the court and who has admitted his guilt, who has
15 admitted his involvement in the charges that are contained
16 in the indictment.

17 You have also seen Mr. Healy's testimony
18 corroborated by testimony of other witnesses and by the
19 documents that have been received as evidence.

20 Let me review for you for a few moments the
21 testimony that you heard from Mr. Healy. Then I will go
22 into various areas and how Mr. Healy's testimony is
23 corroborated.

24 Mr. Healy told you, and there seems to be no
25 dispute on this fact. Mr. Passarelli seemed to have admitted

1 gwrn 22

2 it himself when he took the stand -- that in August, 1975,
3 Mr. Passarelli needed money. He had a business problem and
4 he was concerned that the person who held a mortgage on his
5 marina was going to foreclose on his property. He was in
6 need of money. He had a need to borrow money.

7 Mr. Passarelli told Mr. Healy that he was not
8 in a good position himself to go into the Barclay's Bank to
9 borrow money. We have heard testimony from people from the
10 bank that they had difficulties with Mr. Passarelli's
11 previous loans, that Mr. Passarelli's floor planning
12 operation at the bank had been terminated and there was no
13 question that Mr. Passarelli knew that. We heard testimony
14 from Julia Rabasca that she told Mr. Passarelli in May of
15 1975 that she was closing out his bank account at the
16 Barclay's Bank.

17 Mr. Healy told you that Mr. Passarelli told him
18 that he could not go into Barclay's Bank himself, that he
19 did not get along at Barclay's Bank, and Mr. Passarelli in
20 effect admits that.

21 Mr. Passarelli was also told at that time by
22 Mr. Healy that Mr. Healy knew somebody at Barclay's Bank
23 who he could go to in order to try to arrange for loans,
24 and Mr. Healy and Mr. Passarelli decided that since Mrs.
25 Roccario, Mr. Passarelli's mother-in-law, had previously

1 gwrn 23

2 borrowed money from Barclay's Bank that they would go to
3 Barclay's Bank and that they would borrow the money in Mrs.
4 Roccario's name but the money, the proceeds of that loan,
5 would be used for Mr. Passarelli's marina.

6 Mr. Healy went to Mr. Cleary at the Barclay's
7 Bank, he spoke to Mr. Cleary, he told Mr. Cleary that he
8 had a friend, an associate, who needed money to prevent
9 foreclosure on his property, that this person Gustavo
10 Passarelli could not himself come into the bank to get a
11 loan and would Mr. Cleary lend the money to Mr. Passarelli
12 through a loan application in the name of Mr. Passarelli's
13 mother-in-law, Mary Roccario. Mr. Healy told Mr. Cleary
14 that Mr. Roccario did in fact have a good credit rating at
15 the Barclay's Bank. Mr. Cleary knew full well that the
16 proceeds of that loan were not going to Mrs. Roccario but
17 were going to Mr. Passarelli to help him prevent foreclosure
18 on his property.

19 Mr. Healy was given loan applications to fill
20 out by Mr. Cleary and Mr. Healy went, as he testified, to
21 Mr. Passarelli, at which time Mr. Healy filled out the loan
22 application and he told you he filled out that loan applica-
23 tion based on information given to him by Mr. Passarelli.

24 Mr. Healy then brought the loan application back
25 to the bank and Mr. Cleary, without meeting Mrs. Roccario or

1 gwrn 24
2 Mr. Passarelli, the true recipient of these monies, issued
3 Mr. Healy a \$5000 check which were the loan proceeds.

4 Mr. Passarelli subsequent to that also told
5 Mr. Healy that he needed additional money, and Mr. Healy
6 agreed that he would go back to the Barclay's Bank and he
7 would try to get a loan from Mr. Passarelli based on the
8 real estate corporation, 8626 Realty Corporation I believe
9 is the name of it.

10 Mr. Healy then went back to Mr. Cleary, told
11 Mr. Cleary that Mr. Passarelli needed additional money and
12 would Mr. Cleary make a loan in the name of the real estate
13 corporation. Mr. Cleary agreed to make that loan and Mr.
14 Healy spoke to Mr. Passarelli to find out in whose name
15 they were going to make that loan. Mr. Passarelli suggested
16 that the loan be made in the name of Carmine Liberatore,
17 and Mr. Healy filled out a loan application, a financial
18 statement, in Mr. Liberatore's name based on the information
19 given to him by Mr. Passarelli. Mr. Passarelli signed
20 Carmine Liberatore's name to that loan application.

21 Again, Mr. Healy brought the completed loan
22 application back to the Barclay's Bank and got the \$5000
23 check from Mr. Cleary.

24 Mr. Cleary issued that check without ever
25 meeting Carmine Liberatore, without ever meeting Gustavo

1 gwrn 25

2 Passarelli, knowing that Gustavo Passarelli was not well
3 regarded at the Barclay's Bank.

4 The third loan was the loan in the name of
5 Westchester Avenue Marina, Inc. Again the process was
6 similar. Mr. Passarelli needing the money, Mr. Healy going
7 to Mr. Cleary and telling him that Mr. Passarelli needed the
8 money for the marina, and on this occasion Mr. Cleary
9 approving a loan in the name of Westchester Avenue Marina.

10 The fourth loan that you heard testimony about
11 was the loan in the name of Carl French. Again Mr.
12 Passarelli is in need of money. By his own admission he is
13 continually in need of money in the fall of 1975 to prevent
14 foreclosure on his marina. Mr. Passarelli knows again that
15 he can't go to the bank himself and take out the loan.
16 Mr. Passarelli, according to Mr. Healy, tells Mr. Healy that
17 he has a friend, Carl French, that he can take out the loan
18 in Carl French's name and Mr. Passarelli could use a
19 portion of those proceeds for the marina. Mr. Healy
20 testifies he went back to the bank, told Mr. Cleary that
21 Mr. Passarelli had a continual financial problem, he had a
22 friend who was willing to have Mr. Passarelli use his name
23 for the loan. Mr. Cleary agrees to make the loan. Mr.
24 Healy testified that he was given the information for that
25 loan application from Mr. Passarelli and that loan

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2 application was then submitted to Mr. Cleary and Mr. Cleary
3 made a \$5000 check payable to Carl French which he gives
4 to Mr. Passarelli which Mr. Passarelli -- I am sorry --
5 which he gives to Mr. Healy which Mr. Healy then gives to
6 Mr. Passarelli.

7 Again Mr. Cleary has never met Carl French,
8 he still has not met Gustavo Passarelli.

9 The Joseph Passarelli loan is the next one in
10 this series of loans that involved the defendant Gustavo
11 Passarelli. When we reach this loan it is apparent that
12 Mr. Passarelli's financial situation is becoming more
13 desperate. This is the loan where you heard the testimony
14 that Mr. Healy went to Mr. Cleary and told him -- I think
15 it came out on cross examination by Mr. Cleary's own counsel
16 -- that there was a crisis, that Mr. Passarelli was in
17 desperate need of the money because there would be a fore-
18 closing -- there was imminent foreclosure on Mr. Passarelli's
19 property.

20 At that time Mr. Cleary, without any financial
21 application being submitted, without Mr. Cleary ever meeting
22 Joseph Passarelli, without ever meeting Gustavo Passarelli,
23 gives Mr. Healy a \$5000 check payable to Giuseppe
24 Passarelli, payable to Joseph Passarelli, and he also gives
25 Mr. Healy another \$5000 check just in case the initial \$5000

1 loan to Joseph Passarelli was not sufficient to prevent
2 foreclosure on the property.
3

4 Mr. Healy then goes to the court house. You
5 heard the testimony he went to the court house, he had the
6 financial application filled out by Joseph Passarelli.
7 Joseph Passarelli immediately endorsed the check over for
8 the use of Gustavo Passarelli to prevent the referee fore-
9 closing on Gustavo Passarelli's property.

10 You heard Mr. Joseph Passarelli himself testify
11 yesterday during cross examination that that loan was not
12 for Joseph Passarelli, that loan was for Gustavo Passarelli.
13 Mr. Berger has continually sought to ask questions to show
14 that Mary Roccario could go into Barclay's Bank to take
15 out a loan, that Joseph Passarelli could go in and take out
16 a loan at Barclay's Bank. That may be true and that may
17 well be true why they used Mary Roccario's name and that
18 may be why they used Joseph Passarelli's name, but the fact
19 of the matter is that Gustavo Passarelli, the person who was
20 getting the loan proceeds, himself would have great diffi-
21 culty going to the Barclay's Bank and borrowing that money.

22 The following loan is the loan to Thomas
23 Powers. Again Mr. Passarelli is in need of money. Mr.
24 Passarelli tells Mr. Healy, according to Mr. Healy's testi-
25 mony, that he once sold Mr. Powers a boat and, therefore,

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2 they could get a loan in Mr. Powers' name using the boat
3 as collateral and Mr. Passarelli could use the money from
4 that loan.

5 Mr. Healy testified that the next day he picked
6 up the documents from Mr. Passarelli completed and he
7 brought them to Mr. Cleary. Mr. Cleary, without meeting Mr.
8 Powers, again without having met Mr. Gustavo Passarelli,
9 gives the \$5000 check, the loan proceeds, to Mr. Healy and
10 Mr. Healy brings that check to Mr. Passarelli.

11 Then there is the loan to the Westchester Avenue
12 Used Cars. Again Mr. Passarelli is in need of money. Mr.
13 Healy asked Mr. Cleary to lend money in the name of another
14 of Mr. Passarelli's companies, Westchester Avenue Used Cars.
15 Without any application being submitted, without any
16 financial statement being on file at the bank, Mr. Cleary,
17 knowing that he has to help Mr. Passarelli, agrees to give
18 a \$5000 loan in the name of Westchester Avenue Used Cars.
19 The Westchester Avenue Used Car loan, there was no financial
20 statement, there was no statement from an accountant, there
21 was nothing on file at that bank concerning Westchester
22 Avenue Used Cars Corporation, and I think you might recall
23 from the testimony of the defendant Gustavo Passarelli
24 yesterday that even Gustavo Passarelli was surprised he
25 could get a loan in the name of Westchester Avenue Used Cars

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2 since it was a new corporation, since nothing had been on
3 file at the bank concerning Westchester Avenue Used Cars.

4 We then move to the Fletcher loan. I believe
5 the testimony was that that occurred in the latter part of
6 November, early December of 1975. According to Mr. Healy's
7 testimony and according to what Mr. Conforti testified Mr.
8 Cleary had told him at an earlier time, Mr. Fletcher was
9 in need of \$10,000. Mr. Healy spoke to Mr. Cleary about a
10 loan for \$10,000. Mr. Cleary, knowing that he could not
11 approve a loan for \$10,000 on his own, told Mr. Healy that
12 he would try to get approval from another official for the
13 \$10,000 loan. After that, Mr. Cleary told Mr. Healy that
14 he was unable to get approval for the \$10,000 loan and Mr.
15 Fletcher would have to settle for a \$5000 loan.

16 At this time Mr. Fletcher submits a financial
17 application through Mr. Healy and Mr. Cleary, without
18 meeting Mr. Fletcher, gives the \$5000 check to Mr. Healy.
19 Mr. Fletcher, though, is still in need of an additional
20 \$5000, and so Mr. Healy arranges through Mr. Cleary for
21 another \$5000 loan, this time in the name of Margaret
22 Fletcher. Mr. Cleary knew full well that that \$5000 was
23 not going to Margaret Fletcher. In fact, he knew it was
24 going to Richard Fletcher and he knew he could not make
25 two \$5000 loans to Richard Fletcher without getting approval

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2 from another bank official.

3 Then there is the loan to Mr. Hogan. Again,
4 Mr. Healy's testimony on this point is corroborated by
5 Mr. Hogan. Mr. Healy testified that he obtained a \$5000
6 loan for Mr. Hogan it seemed almost in one day. Without
7 Mr. Hogan meeting Mr. Cleary, without any financial applica-
8 tion at all, any kind of statement of earnings, anything
9 from Mr. Hogan himself, from an accounting firm, Mr. Cleary
10 grants a \$5000 loan to Edward Hogan. In fact, that loan,
11 that is the testimony where Mr. Healy picked up the check
12 from Mr. Cleary, went outside and got the check endorsed
13 and went back and got the check cashed by Mr. Cleary.

14 The one check, one loan that I left out in going
15 in chronological order is the loan to Mr. Healy himself
16 because that loan is obviously very important. It obviously
17 put Mr. Cleary on notice about Mr. Healy. In October, I
18 think it was October 9, 1975, that is after the Mary Roccario
19 loan and I believe before any of the other loans that Mr.
20 Cleary makes to Mr. Passarelli, before the loan to Richard
21 Fletcher, the loan to Edward Hogan, Mr. Cleary approves a
22 loan of \$5000 for Mr. Healy. Mr. Cleary pays out the
23 proceeds of that loan before he finds out whether or not
24 Mr. Healy can withstand any kind of financial investigation.
25 He has already paid out the \$5000.

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2 Mr. Cleary then finds out I believe it is a day
3 later from that thing we have been calling a TRW -- it is
4 a credit check -- that Mr. Healy has numerous judgments
5 against him, numerous obligations against him. He knows
6 that Mr. Healy's word cannot be trusted. He knows that at
7 that point in terms of his dealings with Mr. Healy in a
8 business relationship of that sort. It certainly means
9 he should know he should question Mr. Healy. But instead
10 he proceeds to still issue other loans going to Mr.
11 Passarelli based on Mr. Healy coming into the bank and
12 telling him that Mr. Passarelli needs the money.

13 Now, before I go back to Mr. Healy, I want to
14 just spend a couple of minutes telling you what is false
15 about these loan applications. There are a number of loan
16 applications that have been filed. Let me just briefly
17 run through what is false about them.

18 On the Thomas Powers loan, the loan was not
19 going to Thomas Powers. Mr. Powers testified he did not
20 know anything about a loan. He testified he had no idea
21 that a loan was being taken out in his name. Mr. Powers
22 is not the recipient of that loan. The recipient of that
23 loan is Gustavo Passarelli.

24 Mr. Powers, it says on that application, the
25 purpose of the loan was for Mr. Powers to buy a boat. Mr.

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2 Powers had no intention of buying a boat. Mr. Powers did
3 not have the means, the income, the resources to purchase
4 a boat. That statement says that Mr. Powers had income of
5 \$13,750 from one business and an additional income. Mr.
6 Powers testified that that wasn't true. That application
7 said that Mr. Powers had been continually employed at Gus'
8 Boat Sales for the past thirteen years and that was not
9 true.

10 We have two loan applications submitted on
11 behalf of Carl French. We know that those are not true.
12 The income says \$15,000. Mr. French, you saw him testify,
13 Mr. French certainly did not have an income of \$15,000 from
14 one business and then I think the application says an addi-
15 tional \$3000 in income from another business. The applica-
16 tion falsely states that Mr. French had a life insurance
17 policy of \$10,000. The application falsely states that Mr.
18 French did not have any other debts when in fact Mr. French
19 himself admitted that he must have had at least \$5000 in
20 debts at that time. The application is also not true where
21 it says Mr. French worked at the Westchester Avenue Marina
22 for the past five years. The application is false because
23 it says Carl French is getting the proceeds of the loan when
24 in fact, and Mr. Cleary knew this, Mr. Healy knew this, and
25 Mr. Passarelli knew this, the proceeds of that loan were

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2 going to Mr. Passarelli.

3 There are loan applications in the name of
4 Carmine Liberatore. The information on those loan applica-
5 tions is false. Mr. Liberatore did not have a life insurance
6 policy valued at \$100,000. He did not have an account at
7 County Trust. He did not own 200 shares of AT&T. He did
8 not earn \$25,000 in 1974.

9 And there is a loan application to Mary Roccario.
10 There are statements on that loan application which are
11 also false. The loan application says that she earned
12 \$15,000 from her employment or business. She did not. The
13 loan application talks about a checking account that she had
14 and a savings account that she had at Port Chester Savings
15 when in fact she did not. In fact, her savings account,
16 as I believe either she testified or Janet Passarelli
17 testified, Mrs. Roccario's savings account was in Philadel-
18 phia, Pennsylvania, where in fact Mrs. Roccario lived most
19 of the time and not in New York.

20 Now, I have spent sometime reviewing with you
21 the testimony that you have heard from Mr. Healy. Mr. Healy
22 is a participant in the crime. He has pleaded guilty to
23 submitting a false loan application to influence the bank
24 to make a loan in connection with the loan to Mary Roccario.
25 He signed an agreement, a letter of agreement, which we

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2 read to you. That agreement states the full understanding
3 that Mr. Healy has with the United States government. He
4 has pleaded to a felony count, he exposes himself to a
5 possible term of imprisonment of up to two years, he clearly
6 understands from that agreement that what prison term he
7 gets is not up to the government, that the government makes
8 no predictions to him, no promises to him, no recommenda-
9 tions. He fully understands that whatever prison term he
10 gets, whatever fine is imposed upon him is going to be
11 decided by Judge Carter.

12 Now, keep in mind, ladies and gentlemen, that
13 Mr. Healy has to be sentenced by Judge Carter, and Mr.
14 Healy last week testified for almost a day in this courtroom
15 before the judge who is going to impose sentence on him.
16 Does it make any sense to believe that Mr. Healy would
17 perjure himself, would exaggerate, would fabricate testimony
18 in front of the judge who has the sole power, the sole
19 discretion in imposing sentence upon Mr. Healy?

20 Mr. Healy also by pleading guilty, by that
21 plea agreement, has agreed to resign from the bar. He also
22 understands that any agreement he reached with the United
23 States government is null and void, is off, if he doesn't
24 tell the truth, and if you remember from the witness stand
25 during cross examination Mr. Healy told you that the

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2 instructions that he had been given by an Assistant United
3 States Attorney was that when he testified at trial he was
4 to make sure that he told the truth during the trial. And
5 that is necessary, ladies and gentlemen, because it is
6 important to the government that if we are to convict people
7 we convict people based on truthful testimony and not based
8 on perjury, and it is important to Mr. Healy that he tell
9 the truth because it makes no sense for him to lie in front
10 of the judge who is going to impose sentence upon him next
11 month.

12 Let's look for a moment at the corroboration of
13 Mr. Healy's testimony. Mr. Healy told you that the checks
14 from the Barclay's Bank, the loan proceeds, were going to
15 Mr. Passarelli. You can examine these checks. It is clear
16 from these checks that they were going into the account of
17 either Westchester Avenue Marina, which Mr. Passarelli
18 admitted and acknowledged that he is the sole stockholder,
19 he is the only one with a real interest in Westchester
20 Avenue Marina. There is a check here, the check to Joseph
21 Passarelli. It is signed by Louis Galgano, the referee.
22 Mr. Joseph Passarelli didn't have any problems with his
23 property that he needed a \$5000 check to prevent foreclosure.
24 This check was being used by Mr. Gustavo Passarelli to
25 prevent foreclosure on his property.

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2 The Carl French check endorsed by Janet
3 Passarelli and by Mr. Gustavo Passarelli's only admission
4 used for his benefit.

5 And the other checks are also endorsed West-
6 chester Avenue Marina and 8626 Realty Corporation, another
7 corporation that Mr. Gustavo Passarelli was the sole stock-
8 holder of.

9 We also had testimony from other witnesses
10 which corroborates Mr. Healy. We had the testimony of
11 Thomas Powers. He told you that he had never met Mr. Healy.
12 Mr. Healy told you he had never met Mr. Powers. Mr.
13 Liberatore also told you that he had not met Mr. Healy and
14 Mr. Healy had not met Mr. Liberatore.

15 If Mr. Liberatore and Mr. Healy had not met,
16 then the false information on that loan application, the
17 one signed by Mr. Passarelli was given to Mr. Healy by Mr.
18 Passarelli. We have witnesses in this case who the defense
19 counsel have advanced absolutely no motive to fabricate, and
20 those witnesses corroborate Mr. Healy.

21 You heard testimony from Richard Fletcher about
22 the two \$5000 loans that he was getting the proceeds of
23 but they decided to put the second \$5000 in the name of
24 Margaret Fletcher because that is the only way they could
25 get that loan through Barclay's Bank. We heard the testimony

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2 from Edward Hogan who testified that he got the \$5000 check
3 while waiting outside the bank when Mr. Healy brought it
4 to him and Mr. Hogan endorsed that check, Mr. Healy brought
5 that check back into the Barclay's Bank and then the next
6 thing Mr. Hogan knows Mr. Healy comes out with the \$5000.

7 Mr. Hogan also told you that he never filled
8 out a financial application, never submitted any kind of
9 statement of earnings, any kind of ledger sheet from an
10 accounting firm, any sort of statement at all to the
11 Barclay's Bank.

12 And, as I said, defense counsel have advanced
13 absolutely no reason why those witnesses would lie.

14 We have the testimony of one witness who disputes
15 Mr. Healy in an important respect. That was the testimony
16 you heard from Carl French. Mr. French told you that he
17 had a conversation with Mr. Healy in which he gave Mr.
18 Healy information for the loan application. The loan
19 application is Government's Exhibit 15 and 15-A. And he
20 told you that he gave Mr. Healy truthful information about
21 his background, about his assets, about his loans, thus
22 leaving the implication with you people that it must have
23 been Mr. Healy who put down the obvious, patently false
24 information on these loan applications.

25 Mr. French's story simply doesn't make any sense.

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2 He also testified that many months ago he had been inter-
3 viewed by an FBI agent. He told you that he didn't want to
4 say anything to the FBI agent that would incriminate himself.
5 He said that he had been a friend of Gus Passarelli's for
6 about twelve, fifteen years. In fact, I believe Mr. French
7 testified on Wednesday and we brought out on Monday,
8 Tuesday and Wednesday the way he got down to this court
9 house was through Mr. Gustavo Passarelli. He tells you when
10 he is interviewed by the FBI all he wants to do is not
11 incriminate himself. And what does he tell the FBI at that
12 time? He tells the FBI a series of things that would
13 incriminate Gustavo Passarelli. He does not mention Mr.
14 Healy's name at all and does not tell the FBI that he gave
15 Mr. Healy truthful information to put on these loan
16 applications.

17 Now, Mr. French by his own admission acknowledged
18 that when the FBI was interviewing him Mr. French knew that
19 the FBI was investigating the filing of false loan appli-
20 cations with the Barclay's Bank. Mr. French knew that the
21 FBI wanted to know what involvement he had with these
22 obviously false loan applications. If Mr. French just at
23 the time when he was interviewed by the FBI did not want to
24 incriminate himself, then as a matter of common sense Mr.
25 French would have told the FBI agent, "Well, I gave Mr.

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2 Healy truthful information to fill out on these applications.
3 I don't know what he did later."

4 But Mr. French did not tell the FBI agent that
5 and he did not tell the FBI agent that because it is simply
6 not true. Mr. French did not give Mr. Healy the information
7 on this loan application, did not give him truthful informa-
8 tion to be filled out on that loan application. That story
9 is a fabrication, a fabrication which fits rather neatly
10 into Mr. Gustavo Passarelli's version of the events.

11 Also, Mr. French told you that he had gotten
12 Thomas Powers' permission to take out a loan in Mr. Powers'
13 name. Mr. Powers testified last week and Mr. Powers denied
14 that he had ever given anybody any approval to take out a
15 loan in his name at Barclay's Bank. In fact, Mr. Powers
16 said he didn't know anything about a loan at the Barclay's
17 Bank being taken out in his name. I believe the record will
18 show that defense counsel did not even attempt to cross
19 examine Mr. Powers on that point.

20 On Mr. Passarelli's testimony, just on what he
21 is willing to admit on the witness stand, because these
22 certain things he can't conveniently deny, he can't make up
23 stories about, based on what Mr. Passarelli admits he was
24 involved in a misapplication of bank funds and filing false
25 loan applications. He admits that he was getting the

1 proceeds of these loans, that he was using -- he tells you
2 that he was only using a portion of these loans. There
3 is a thing that the loan for Mary Roccario, part was going
4 to be used for his marina and part was going to repair the
5 house. The fact remains that portions of these loans and
6 the government submits the only reason these loans were
7 taken out was to benefit Mr. Gustavo Passarelli's marina.
8 That is the reason these loans were taken out. These loans
9 were taken out and given to Mr. Passarelli and Mr.
10 Passarelli admits that.
11

12 He also admits he himself did not want to go
13 into the Barclay's Bank in order to take out the loans. He
14 admits that he knew that his floor planning operation had
15 been terminated, he admits that he knew his bank account
16 at Barclay's Bank was being closed out.

17 Mr. Berger in his summation may suggest to you
18 reasons that go beyond whether or not Mr. Passarelli had
19 bad credit at the Barclay's Bank. The fact remains, ladies
20 and gentlemen, that Mr. Passarelli, although he was in
21 desperate need for money by his own admission, he needed
22 the money to prevent the foreclosure on his marina, the fact
23 remains that rather than Mr. Passarelli himself going into
24 any of the branches of the Barclay's Bank, a Barclay's Bank
25 he claimed he had a good relationship with and he had paid

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2 back loans to, instead of Mr. Passarelli, who needed the
3 money, going into the Barclay's Bank and borrowing the money
4 himself, he goes through all of these complicated maneuvers
5 in order to gain that money. He has loan applications sub-
6 mitted in other people's names and he never himself tries
7 to go into Barclay's Bank.

8 Ask yourselves, ladies and gentlemen, if Mr.
9 Passarelli did not have troubles with Barclay's Bank, and if
10 he needed money very badly to prevent foreclosure of his
11 property, then why didn't he himself go into Barclay's Bank
12 and try to borrow the money? The simple reason is because
13 he couldn't, and, therefore, by his own admission he paid
14 Mr. Healy money to go to the Barclay's Bank and to arrange
15 for these loans.

16 Let me speak to you for a few minutes on the
17 question of motive. Mr. Passarelli's motive is absolutely
18 clear. There is no question about that. He needed the
19 money, he couldn't get the money himself, he got the money
20 in other names.

21 Let's talk about Mr. Cleary for a few minutes.
22 Mr. Cleary, when Mr. Healy came into the bank initially, I
23 guess it was September of 1975 in the Mary Roccario loan,
24 Mr. Cleary knew as an assistant bank manager that the way
25 you get promoted in a bank is by generating business for the

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2 bank, by obtaining customers for the bank. Mr. Cleary
3 thought that Mr. Healy would be a source of loans for him
4 and he proceeded to approve loans for Mr. Healy in order to
5 generate business, in order to gain customers for the bank,
6 because Mr. Cleary knew that that would help him in
7 advancement at the bank.

8 But it goes further than that, ladies and
9 gentlemen.

10 Mr. Cleary knew that he had given a \$5000 loan
11 in Mary Roccario's name and that money was being used for
12 Mr. Passarelli's marina, he knew he had given a loan for
13 8626 Realty Corporation, that that loan was going to be used
14 for Mr. Passarelli's marina. I believe there were a couple
15 of other loans at the Westchester Avenue Marina which
16 obviously were going to be used for the marina. The Carl
17 French loan which Mr. Passarelli knew was going to be used
18 for the marina. Mr. Cleary knew he had granted a number of
19 loans that were going to be used by Gustavo Passarelli.

20 At this point he had a joint interest with Mr.
21 Passarelli to keep that marina from being foreclosed because
22 if that marina went into foreclosure the result would be that
23 all the previous loans that Mr. Cleary had granted for Mr.
24 Passarelli's use could well become worthless, and that's why
25 there is tremendous significance to what happened with the

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2 Giuseppe Passarelli loan. That's when Mr. Healy goes to
3 Mr. Cleary and tells him, "We have a crisis. We have a
4 desperate situation. Mr. Passarelli is about to lose his
5 marina. They are going to foreclose on it. All the other
6 loans are going to become bad if that happens."

7 So Mr. Cleary, in complete total violation of
8 any kind of normal banking procedures, without any kind of
9 financial application on file at all, gives Mr. Healy a
10 \$5000 check to Joseph Passarelli to use for Gustavo
11 Passarelli's marina, and just in case that \$5000 check is
12 not enough he gives him an additional \$5000 check at the
13 same time if that additional money is needed to protect the
14 marina because it is very important to Mr. Cleary at this
15 point there be no foreclosure of the marina because that
16 would jeopardize the other loans that he had approved.

17 Mr. Murphy in his summation may tell you that
18 you can't convict the defendant based on negligence. The
19 government completely agrees. The government does not ask
20 you to convict Mr. Cleary because he was simply negligent.
21 The government asks you to convict because Mr. Cleary
22 entered into a scheme to misapply bank funds and to have
23 false applications submitted.

24 Think of the number of things that Mr. Cleary
25 did that were revealed from the witness stand. He loaned

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2 money without ever meeting Gustavo Passarelli, Mary Roccario,
3 Carmine Liberatore, Giuseppe Passarelli, Edward Hogan,
4 Richard Fletcher. He loaned money to Edward Hogan without
5 a financial application being submitted or to have any
6 reason to believe any was on file. He loaned money to
7 Richard Fletcher in the name of Margaret Fletcher and
8 there was no application submitted in the name of Margaret
9 Fletcher. He loaned money in the name of Westchester Avenue
10 Used Cars, a new corporation, clearly no financial statement
11 had been in any way submitted.

12 He also admitted finally I believe on the
13 witness stand that at the time of the 8626 Realty Corpora-
14 tion loan he knew the money was going to Gustavo Passarelli
15 and that Gustavo Passarelli himself could not go into
16 Barclay's Bank to obtain money.

17 Mr. Cleary, and you can consider this, ladies
18 and gentlemen, when you have to decide on the issue of
19 intent, Mr. Cleary also had a previous experience at
20 Chemical Bank in which he again approved loans in excess of
21 his authority. Mr. Cleary was not new to this, he was not
22 naive. Mr. Cleary and Mr. Passarelli have both tried to
23 create the impression that somehow they were badly hood-
24 winked by Mr. Healy.

25 Mr. Cleary told you that he had worked at banks

1 in high school and college, that he had worked at the
2 Chemical Bank and there he exceeded his lending authority.
3 Mr. Cleary in fact was in line to become manager of a branch
4 of the Barclay's Bank. I think you can, as a matter of
5 common sense, conclude that if Mr. Cleary was as naive as
6 he tries to portray to you people, Barclay's Bank was not
7 about to make him manager of a branch. A manager of a
8 branch has some supervisory control authority over the
9 making of loans, he supervises a number of other people
10 that work at the bank. If Mr. Cleary was as naive as he
11 tries to pretend, the bank was not about to make him manager
12 of one of its branches.
13

14 Let me speak for a few minutes on the question
15 of credibility. You are going to have to judge Mr. Cleary's
16 credibility and credibility of other witnesses. I think
17 on the witness stand Mr. Cleary told you certain things
18 which said something about his credibility as a witness,
19 whether he is a man worthy of belief.

20 On direct examination he tried to convey an
21 impression to you of unselfish dedication and devotion to
22 the bank. He told you about how he had done this work for
23 the cafeteria, about how he had donated his own stereo for
24 the employees to use in the lounge. He neglected to tell
25 you, and it came out during cross examination, that without

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2 any authority at all he took fifty dollars from one of the
3 bank's funds for the stereo that he had loaned to the bank,
4 and he also, consistent with his other pattern of activity
5 during this case, wrote down that the purpose of his taking
6 the fifty dollars was for something like Christmas decora-
7 tions. Mr. Cleary knew full well that he was taking the
8 fifty dollars because without any authority he took that
9 money because of the stereo that he is trying to claim
10 he magnanimously lent to the bank.

11 More significantly, Mr. Cleary writes down a
12 totally false statement, that he did it for Christmas
13 decorations, something that is absolutely not true.

14 His testimony about what happened at the Chemical
15 Bank also says something about Mr. Cleary's credibility.
16 When Mr. Cleary is asked about something, he will try to
17 deny or at least confront the truth. You heard the testi-
18 mony by Mr. Von Bernewitz that when Mr. Cleary was initially
19 approached at the Chemical Bank about approving certain
20 loans, Mr. Cleary said he had not exceeded his lending
21 authority, these were not separate loans, they were part
22 of a refinancing scheme which under the bank regulation
23 he was entitled to do on his own. The Chemical Bank checked
24 the records and they found that his explanation simply did
25 not square with the truth. Mr. Cleary was then confronted

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1 about that and at that point when he was confronted by the
2 truth again he acknowledged that what he initially told the
3 bank was not true and that in fact these were separate loans
4 that he had made to the same individual and he exceeded his
5 lending authority.
6

7 He also told the bank officials that there were
8 no kickbacks or he used the term "no gratuities" involved
9 with anything at Chemical Bank. He is then faced with the
10 possibility of a lie detector test and he then admits that
11 there were in fact gratuities involved. The importance of
12 that testimony, ladies and gentlemen, is not the gratuity
13 part of it. The importance of that testimony is the fact
14 that Mr. Cleary just has certain difficulty in telling the
15 truth unless he is confronted with something which makes
16 it impossible for him to avoid finally telling the truth
17 and getting the full statement out.

18 Let me review briefly what Mr. Passarelli told
19 Mr. Conforti, the FBI agent. The FBI agent testified last
20 week.

21 Mr. Passarelli at a previous time when he was
22 interviewed by the FBI agent told Mr. Conforti that Mr.
23 Healy told him that he had to pay off the guy at Barclay's
24 Bank. He admitted on the stand also here that Mr. Healy
25 told him the guy at Barclay's Bank had to be paid off. Now,

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2 putting aside whether in truth Mr. Cleary was being paid off,
3 that statement says something about what Mr. Passarelli's
4 knowledge was. Mr. Passarelli knew that there was some-
5 thing wrong with his being able to get all these loans. He
6 knew there was something wrong with it because anybody
7 with common sense knows that. And he also knew it because
8 Mr. Healy told him he had to pay off a bank official in
9 order to do that.

10 Why would Mr. Healy tell Mr. Passarelli a bank
11 official had to be paid off without putting Mr. Passarelli
12 on notice that there was something wrong with the way he
13 was obtaining these loans?

14 Mr. Passarelli also told Mr. Conforti that he
15 could never have gotten credit himself if he had gone to the
16 Barclay's Bank. Mr. Passarelli admitted to Mr. Conforti
17 telling his mother-in-law that he needed money for his
18 marina. He told Mr. Conforti that at the time the 8626
19 Realty Corporation loan was taken out Carmine Liberatore was
20 not vice president of that corporation. Mr. Liberatore
21 told you that he was never vice president of that corpora-
22 tion. The fact remains that Mr. Passarelli by his own
23 admission to Mr. Conforti acknowledged at the time that
24 loan was put through Mr. Carmine Liberatore was not vice
25 president of the corporation.

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2 Mr. Passarelli also told Mr. Conforti that Mr.
3 Powers was going to purchase a boat in connection with that
4 loan and that Mr. Powers had simply not come to pick up the
5 boat. That is the testimony you heard from Mr. Conforti in
6 which Mr. Passarelli tried to show Mr. Conforti the boat
7 that Mr. Powers supposedly was going to buy from Mr.
8 Passarelli. That is part of the pattern Mr. Passarelli had
9 developed at that time of trying to create facts that just
10 didn't exist. He was trying to create the impression that
11 the Thomas Powers loan was in fact going to be used by
12 Thomas Powers to purchase a boat when Mr. Passarelli knew
13 full well at the time the Powers loan was submitted Mr.
14 Powers had no intention of buying a boat, had never discussed
15 that possibility with Mr. Passarelli and that the loan was
16 submitted in Mr. Passarelli's name simply for Mr. Passarelli
17 to get another \$5000.

18 Mr. Cleary also told Mr. Conforti a number of
19 revealing things. Mr. Conforti was told by Mr. Healy that
20 he knew that Gustavo Passarelli needed money for a mortgage
21 on his marina. He told Mr. Conforti that he made five
22 loans each of \$5000 to individuals and companies all
23 connected with Mr. Passarelli.

24 I believe the testimony from Mr. Conforti was
25 these were the loans for 8626 Realty Corporation, Westchester

1 gwrn 50

2 Avenue Used Cars, Westchester Avenue Marina, Mrs. Roccario
3 and Giuseppe Passarelli.

4 He also admitted to Mr. Conforti the facts
5 surrounding Government's Exhibit 29. That is the loan to
6 Mr. Healy. Mr. Cleary told Mr. Conforti that he had already
7 disbursed the proceeds of the monies to Mr. Healy. He
8 then found out that the bank would not approve the loan to
9 Mr. Healy because an adverse financial statement came in on
10 Mr. Healy. The bank did not know, however, that Mr. Healy
11 had already been given the checks.

12 So Mr. Cleary, in order to protect himself so
13 the bank would not know that he gave out the loan proceeds,
14 had Mr. Healy come back to the bank, change the loan from an
15 installment loan to a time loan and have Mr. Healy sign
16 October 9 as the date of the note when in fact the time loan
17 was not extended until I believe a day or two later. Mr.
18 Cleary had to do this in order to cover up the fact that he
19 had improperly given out the proceeds of the loan to Mr.
20 Healy before any credit check had been done on Mr. Healy.

21 I am going to have an opportunity to address you
22 briefly after you hear from Mr. Murphy and Mr. Berger. Let
23 me just ask you to listen to their arguments carefully and
24 I will try to make a rebuttal as to certain specific argu-
25 ments that they raise during their summation. When they

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2 argue to you that all we have here is a case of negligence,
3 don't let them deceive you on that point. That is certainly
4 not what is in this case. When they try to convince you
5 that Mr. Cleary and Mr. Passarelli were naive people and
6 not grown businessmen, who knew full well what they were
7 doing, when they try to tell you that Mr. Healy was a
8 great con artist, and you heard Mr. Healy, I want you to
9 be skeptical about that, I want you to think about that,
10 because I want you to realize -- the government asks you to
11 realize that Mr. Cleary and Mr. Passarelli, the banker and
12 this businessman, knew full well what they were doing in
13 this case.

14 Thank you for your attention. I will speak to
15 you later.

16 THE COURT: We will take a ten-minute recess.

17 Who goes next -- you, Mr. Murphy?

18 MR. MURPHY: Mr. Berger goes next and I go
19 after him.

20 (Recess)

21 MR. BERGER: May it please the Court, Mr.
22 Weinberg, Mr. Conforti, Mr. Murphy, Mrs. Williams, ladies
23 and gentlemen of the jury:

24 Firstly, I would like to thank you on behalf of
25 myself and on behalf of Mr. Passarelli for the service you

1
2 Do you want to know what a criminal is? Take a
3 look at Mr. Healy. He really hurts people. He is dangerous.
4 He doesn't just take money. He destroys lives, families.
5 He risks their money. Take a look at the Healy checks.
6 Do you realize what he spends money for? On the Winged
7 Foot Country Club. How would Mr. Healy spend money on
8 the Winged Foot Country Club when he can't
9 be trusted to take a loan? That man is dangerous. He hurts
10 people. He takes money from Mr. Passarelli. What he did
11 to Mr. Passarelli is a crying shame. What he did to Mr.
12 Cleary is a crying shame. That man is dangerous, really
13 dangerous, really hurts people. That man is a criminal.

14 That's what a criminal means.

15 Mr. Cleary has gone through a lot of ignominy
16 in this case. He has dug in his heels on the final round.
17 He says, "Don't brand me a criminal."

18 Healy is a criminal. Cleary is a victim. Yes,
19 you can find him a victim. He is a victim. But I ask you
20 don't brand him a criminal. Let your verdict reflect the
21 facts in this case after your due consideration. Find Mr.
22 Cleary not guilty on all counts.

23 Thank you.

24 MR. WEINBERG: Ladies and gentlemen, before I
25 get back to the evidence there were some very serious charges

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leveled at the government by Mr. Murphy in his summation,

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things about low blows being struck by the government, by

4

the prosecutor, trying to create dirt in the case. I ask you

5

to keep in mind that every piece of evidence the government

6

elicited was relevant to the issues in this case, was

7

relevant to the guilt or innocence of Mr. Cleary and Mr.

8

Passarelli. It was not to strike low blows at Mr. Cleary.

9

Mr. Murphy knows the questions asked during this case and

10

the witnesses called during this case by the government were

11

proper questions. Mr. Murphy's attack on the government and

12

what the government did in this case is absolutely unfounded,

13

and Mr. Murphy knows that.

14

The government never argued to you that there

15

were payoffs in this case. What the government did do is ask

16

Mr. Passarelli about a conversation he had with an FBI agent

17

in which he acknowledged that Mr. Healy had told him that he

18

had to pay off a bank officer. That testimony is obviously

19

relevant to Mr. Passarelli's state of mind. Mr. Passarelli,

20

by acknowledging that Mr. Healy told him that, whether it

21

is true or not, but the fact that Mr. Passarelli said -- that

22

Mr. Healy told Mr. Passarelli that he had to pay off a bank

23

officer put Mr. Passarelli on notice that what he was doing,

24

that the way the loans were being obtained from the Barclay's

25

Bank was being done in an illegal manner, because otherwise

there would be no need for Mr. Healy to have to pay anybody off at the bank if Mr. Healy was acting properly with the bank.

Mr. Berger in his summation to you about this boat, the boat that is supposed to go for the Thomas Powers loan. I can't quote for you the exact word Mr. Berger used but he said there were no documents in this case showing that a particular boat was on any of the bank documents. Ladies and gentlemen, Government's Exhibit 24 is the installment note and security agreement in the Thomas Powers loan. This security application was submitted along with the application for personal credit for Thomas Powers, and it says that the reason for the loan is to purchase a boat.

The security agreement states as collateral for the loan, the loan for Thomas Powers, that it is going to be for a 24 foot Chris Craft with the number NY1174 BY.

Ladies and gentlemen, Government's Exhibit 58 is in evidence. It shows a bill of sale from the Westchester Avenue Marina in May of 1976, showing that Mr. Passarelli's company was selling a boat with the number NY1174 BY to a Mr. Gangemi. The boat that Mr. Passarelli put down on the installment loan application for Thomas Powers is the same boat that stayed in Mr. Passarelli's boatyard. It was there at the time that the loan was put in for Thomas Powers and

1 it remained there until sometime in 1976, when Mr.
2 Passarelli sold that boat, Westchester Avenue Marina. Mr.
3 Passarelli tried to do something else with that boat. Mr.
4 Passarelli's other story about that boat was that Thomas
5 Powers was in fact going to purchase a boat from him. In
6 fact, when Mr. Conforti went to interview Mr. Passarelli,
7 he took Mr. Conforti out and showed Mr. Conforti the Powers
8 boat with the same serial numbers on the Powers loan appli-
9 cation and installment note and the bill of sale from Mr.
10 Passarelli.
11

12 Mr. Passarelli also tried to convince the FBI
13 agent, Mr. Conforti, that somehow he had paid back the loan
14 proceeds to Thomas Powers, and he showed Mr. Conforti this
15 check, Government's Exhibit 44, which is a check payable to
16 Thomas Powers. It says on the bottom, "refund to boat."
17 Signed Gustavo Passarelli. The date on this check is December
18 2, 1975, well before the bank found out about the bad loans.

19 The government submits to you and evidence shows
20 what Mr. Passarelli was trying to do was trying to stick with
21 his initial story that Mr. Powers was trying to buy a boat
22 from him and that the loan was going to Mr. Powers to buy a
23 boat and that he had this fight with Mr. Healy and he was
24 trying to return the \$5000 to Mr. Powers.

25 Mr. Berger also raised a question about the

1 financial statement for Carmine Liberatore and he went into
2 the question, why the bank needed this financial statement.
3 You heard the testimony that there was no account statement
4 which showed liabilities and assets submitted to 8626 Realty
5 Corporation. When a corporation does not submit a financial
6 statement, as was submitted in the case of Westchester Avenue
7 Marina, when that is not submitted on behalf of a corpora-
8 tion, the bank wants a financial statement from one of the
9 corporate officers. In this case, Mr. Passarelli and Mr.
10 Healy submitted to Mr. Cleary a financial statement on
11 behalf of Carmine Liberatore for the loan for 8626 Realty
12 Corporation. The bank, if everything was being done properly,
13 which we know it was not, but if everything was being done
14 properly, the bank could have relied on this financial state-
15 ment from Carmine Liberatore in deciding whether or not to
16 give the loan to 8626 Realty Corporation.

17
18 Another interesting thing about Mr. Passarelli's
19 testimony concerning the Mary Roccario loan. There was
20 testimony I believe from Mrs. Passarelli and Mr. Passarelli
21 that there was some discussion with Mrs. Roccario, the
22 defendant's mother-in-law, about taking out a loan in her
23 name and that some of the proceeds were going to go for the
24 marina and some of the proceeds were going to go to repair
25 her house, the house that in fact Mr. and Mrs. Passarelli

live in. Mr. Passarelli also claimed on the witness stand at he didn't know Mr. Healy was submitting a loan application to the Barclay's Bank for Mary Roccario which said that the purpose of the loan was to repair the house. Mr. Passarelli wants to try to cover all bases. He is trying to tell us on one hand that Mrs. Roccario, the person whose name was on the loan application, knew and approved in advance that some of the proceeds were going to go to repair the house, but, on the other hand, he wants to also tell you that he didn't know that the loan application was going to say that the purpose of the loan for Mrs. Roccario was to repair her house. Again, Mr. Passarelli should not be able to have it both ways, as he tries to create in his testimony.

There has been a good deal of discussion about whether or not Mr. Cleary violated bank procedures. There has been some testimony that sometimes oral loan applications are made. Ladies and gentlemen, an oral loan application can be made in the case where the bank officer has had prior experience with the person who is supposed to be getting the loan proceeds, where there may be a financial statement on file on behalf of a particular corporation or on behalf of a particular individual. If you have had a long-standing relationship with a bank and you need a business loan on an emergency basis, the bank officer knows you, you

may be able to call that bank officer.

What Mr. Cleary did in this case is so much different than that, so far from what Mr. Murphy and Mr. Berger have told you happened in this case. What Mr. Cleary did was to approve seven \$5000 loans, the proceeds of which he knew were going to Gustavo Passarelli.

Mr. Murphy claimed that I tried on my cross examination to talk about Mr. Cleary, the thing about the stereo and what happened at Chemical Bank. I tried for quite sometime to elicit from Mr. Cleary when he was willing to admit that he knew that the loan proceeds were going to Gustavo Passarelli. Now, my recollection is -- it is your recollection that controls -- my recollection is that he finally acknowledged that he knew before the loan to 8626 Realty Corporation that the loan proceeds were going to Mr. Passarelli.

In any event -- and that is the second loan that was approved of these seven loans. In any event, as Mr. Healy told you, even before the first loan to Mary Roccario, he had told Mr. Cleary that the loan proceeds were going to Gustavo Passarelli.

But either way, under Mr. Cleary's version of the facts or how Mr. Healy testified or how the documents support the testimony, it is clear that Mr. Cleary approved

1 a number of loans totaling over \$25000 knowing the proceeds
2 of those loans were going to Gustavo Passarelli, an individual
3 Mr. Cleary knew could not come into the Barclay's Bank and
4 obtain a loan himself. You do not have to be a sophisticated
5 bank officer to know that that is wrong.
6

7 In addition, Mr. Cleary approved a number of
8 loans without any financial applications or any loan appli-
9 cations being submitted. There was none submitted for
10 Margaret Fletcher, there was none submitted for Edward Hogan.

11 The bank had absolutely no way of knowing any-
12 thing about Edward Hogan. There was nothing down on paper
13 about Mr. Hogan. Mr. Murphy tells you about how Mr.
14 Flanagan approved some of these loans. Mr. Flanagan, as
15 manager of the bank, had to rely on Mr. Cleary. Mr. Cleary,
16 as far as Mr. Flanagan knew, had authority on his own to
17 approve a loan up to \$5000 for a particular individual. And
18 there was nothing on the face of these bank loans to
19 indicate anything irregular about those particular loans.
20 Each one was for \$5000. That is precisely why \$5000 loans
21 were used, because Mr. Cleary could approve \$5000 loans
22 without getting the approval of any other bank officer, and
23 Mr. Flanagan, relying on Mr. Cleary, approved those loans.

24 Mr. Murphy also made a big deal about Defendant's
25 Exhibit B, that manual. Mr. Flanagan was quite clear that

1
2 that manual did not tell a bank officer, a lending officer,
3 how to assess credit. The assessment of credit he told you
4 involved various subjective judgments, but everybody knew
5 that Mr. Cleary had no business approving these seven loans
6 knowing the proceeds of those loans were going to Gustavo
7 Passarelli, a man who himself could not come into Barclay's
8 Bank and borrow the money.

9 Mr. Berger I believe in his initial part of his
10 summation told you there was no evidence that Mr. Cleary knew
11 there were any material misrepresentations on the loan
12 applications. Well, that is clearly false, because Mr. Cleary
13 knew the grossest, the biggest of all the material mis-
14 representations was the effort on the part of Mr. Healy,
15 Mr. Passarelli and Mr. Healy to disguise that Mr. Gustavo
16 Passarelli was the true recipient of these loans.

17 A word on Mr. Healy. Right now defense counsel
18 has given you vigorous condemnations of Mr. Healy. Mr.
19 Berger before that was condemning Mr. Liberatore.

20 Let's keep in mind that it was not the government
21 that chose to do business during the time charged in this
22 indictment with Mr. Liberatore and Mr. Healy. The government
23 did not submit these loan applications with Mr. Liberatore's
24 name on them; the defendants did. It was the defendant, Mr.
25 Cleary, who, even though he knew that Mr. Healy had a number

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2 of judgments against him, it was Mr. Cleary, because of his
3 own greed to generate business for the bank, promote himself
4 in the bank, decided to do business with Mr. Healy.

5 Now, Mr. Cleary, Mr. Healy and Mr. Passarelli,
6 when they started off in this scheme, didn't expect everything
7 to fall apart and didn't expect to get caught. They might
8 have had some hope, some expectation, that these loans
9 eventually would be paid back. Most people who engage in
10 some kind of criminal fraud don't necessarily predict that
11 they are going to get caught and the person that they
12 defrauded is not going to be made whole, that the person
13 is not going to get his money back. They might have had
14 some vague hope and expectation that especially things
15 would work out for Mr. Passarelli so the loans can be paid
16 back.

17 But Mr. Cleary, deliberately disregarding the
18 bank's interests, the bank's depositors' interests, approved
19 loans that he knew were necessary to protect Mr. Passarelli's
20 marina and he had absolutely no business doing that.

21 Mr. Passarelli tries to tell you that he was
22 just a naive person taken in by Mr. Healy. Well, there are
23 certain indisputable facts. These seven checks, the proceeds,
24 were used for the benefit of Mr. Passarelli. Mr. Passarelli
25 was in terrible need of money. If Mr. Passarelli himself

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2 could have gone into Barclay's Bank and gotten a substantial
3 loan, don't you think he would have done that? He didn't do
4 it because it would have been impossible for him to have
5 gotten a loan. In fact, he went so far as to pay Mr. Healy
6 money to help him secure these loans. If Mr. Passarelli had
7 such a great relationship with the Barclay's Bank, he needed
8 the money, he would have gone there himself and gotten the
9 loans approved.

10 THE COURT: Mr. Weinberg, you have finished your
11 time.

12 MR. WEINBERG: I will conclude.

13 Ladies and gentlemen, in conclusion, let me just
14 say that Mr. Berger and Mr. Murphy have made a number of
15 comments about what the law is, whether or not you should
16 brand these defendants as criminals. Your sworn duty, your
17 job, your responsibility is not to decide what is legal and
18 what is illegal, whether these defendants are criminals or
19 not. That is not your responsibility. You have a sworn
20 duty not to do that. Your sworn duty is to decide the case
21 based on the law as the judge gives it to you, not what you
22 think the law should be. It is your sworn duty to return
23 a verdict consistent with the law and the facts without
24 sympathy or bias for either the government or the defendants.

25 Thank you.

CHARGE OF THE COURT

(In open court; jury present.)

THE COURT: Ladies and gentlemen, we now come to that part of the case where the evidence is in, the lawyers have presented their arguments and you are about to exercise your final role, which is to pass upon and to decide the fact issues that are in the case. You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you find them. The logical result of that application is your verdict in the case.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel either for the government or the defense may have said with respect to matters in evidence during the trial in a question, in colloquy with the Court, in argument or in summation is not to be substituted for your own recollection of the evidence.

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2 So, too, anything the Court may have said during
3 the trial or may refer to during the course of these
4 instructions as to any factual matter in evidence is not to
5 be taken in lieu of your own recollection. I want to
6 emphasize that. I may have made some comment on the facts
7 in the course of this trial. The point is that that is my
8 own recollection, not yours. You are governed and controlled
9 by your own recollection of what the evidence is, not mine.

10 The case must be decided by you from the sworn
11 testimony of the witnesses and on such exhibits as were
12 received in evidence and any stipulations among counsel.

13 At times throughout this trial I have been called
14 upon to make rulings upon various matters of law, as, for
15 example, when a question put to a witness was objected to,
16 or after a question was answered a motion was made to strike
17 the answer, or the offer of a document was objected to.

18 I have sustained some objections and I have
19 overruled others. I have received and rejected exhibits that
20 were offered. It is essential in the performance of your
21 duty that when anything was ordered stricken from the record
22 or rejected that you put it out of your mind and disregard
23 it entirely. Similarly, if a question was asked and an
24 objection to that question was sustained and no answer was
25 given, the question itself should play no part in your

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2 consideration of the case. Please do not concern yourselves
3 at all with my reasons for any of these rulings. They are
4 purely legal matters and are of no concern to you.

5 Conferences at the bench were conducted at the
6 request of the attorneys. As I have advised you, those
7 conferences were solely on questions of law and are of no
8 concern to you. You are not to draw any inferences against
9 either side because of requests for such conferences or
10 because such requests were denied.

11 Now, it is your function to determine the truth
12 or the falsity of the testimony of each witness. No
13 inference as to the credibility of any witness should be
14 drawn from the fact that upon occasion I have asked questions
15 of a witness. My questions were only intended for clarification
16 or to expedite matters. They were not intended to
17 suggest any opinion as to the credibility of a witness who
18 appeared before you.

19 Now, how do you determine the truth and how do
20 you appraise the credibility of the witness? I think I will
21 repeat what I told you when you sat down. You use your
22 plain everyday common sense. Because you are in the jury box,
23 it does not suggest you have left your common sense at home.

24 The degree of credit to be given to a witness
25 should be determined by his or her demeanor here, his or her

1 relationship to the controversy and to the parties, his or
2 her bias or impartiality, the reasonableness of his state-
3 ments, the strength or weakness of his recollection viewed
4 in light of all the other testimony and the attendant cir-
5 cumstances in the case.
6

7 You observed the witnesses, you heard their
8 testimony. How did they strike you? Did their answers
9 seem frank, open, truthful, candid? Or were they equivocal,
10 deliberately confusing or evasive? Or were they somewhere
11 in between? How did each witness impress you? And so you
12 take each one, and on the basis of your common sense and
13 your everyday experience you determine whether or not you
14 believe the witnesses and the extent to which you believe
15 them.

16 In passing upon the credibility of a witness,
17 you may also take into account whether there were material
18 inconsistencies or contradictions within his or her own
19 testimony, whether a witness changed his or her testimony,
20 the extent to which he or she has been corroborated or
21 contradicted by other credible evidence, his criminal record,
22 if any, whether the witness is a disinterested one or one
23 who is fostering some interest of his own in giving testimony.

24 An interested witness is not necessarily unworthy
25 of belief. It is a factor, however, which you may take into

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2 consideration in determining the weight and credibility to
3 be given to that witness' testimony.

4 If you find that any witness has wilfully
5 testified falsely to any material fact, you may disregard
6 all of his testimony or accept such part of it as you believe
7 worthy of belief as it appeals to your reason or judgment.

8 A witness may be discredited by contradictory
9 evidence, or by evidence that at other times the witness has
10 made statements which are inconsistent with his or her
11 testimony here. If you believe that any witness has been
12 discredited in this manner, you may give the testimony of
13 that witness whatever credibility you think it deserves.

14 Now, the testimony of a witness may fail to
15 conform to the facts as they occurred because a witness is
16 intentionally telling a falsehood, because a witness did not
17 accurately observe the events about which he testified, or
18 because his recollection of what happened is at fault, or
19 even because he has not expressed himself clearly in giving
20 his testimony.

21 You are entitled to consider the possibility that
22 when a witness is called upon to testify sometime after the
23 event that inconsistencies may result from an innocent
24 mistake or lapse of memory rather than from a deliberate
25 attempt to falsify or change the facts. It is not unusual

for a witness in a proceeding to utter inconsistencies at some stage.

You may accept so much of the testimony of a witness as you may deem true and disregard the rest. You are at liberty, if you deem it appropriate, to disbelieve the testimony in whole or in part even though it is not otherwise contradicted or impeached.

The fact that the government is a party here, that the prosecution is brought in the name of the United States of America, entitles it to no greater consideration than that accorded to any other party to litigation. By the same token, it is entitled to no less consideration. All parties, government and individuals alike, stand equal before this Court.

Now, in deciding this case, you will be called upon to consider both direct evidence and circumstantial evidence. I would like to explain the difference between these two types of evidence.

Direct evidence is where a witness or a participant testified as to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. A document may also contain direct evidence.

Circumstantial evidence is evidence of facts and

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circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

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Stated somewhat differently, circumstantial evidence is evidence of facts from which other facts that are material in the lawsuit may be found by the process of inference.

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7

Let me give you an example that I believe has nothing whatever to do with the facts in this case.

8

9

Suppose you had a material issue in some case as to whether John Doe was drinking alcoholic beverages on a particular night. A witness might take the stand and testify that he had given whiskey to John Doe and had seen him drinking it. That would be what is termed direct evidence. If you believed the witness and thought he was able to report accurately, you could find from that direct evidence that John Doe had been drinking on the night in question.

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On the other hand, you might have a witness testify that he had seen John Doe enter a tavern and then had seen him leave the tavern a few hours later, walking and talking in ways that suggested he was drunk. If you believed that witness and thought he was an accurate reporter, you could find on the basis of that testimony that John Doe had been drinking on the night in question. You would be using circumstantial evidence to find the existence of a

material fact in that hypothetical case.

Let me tell you that for your purposes there is no general rule of law and no general rule of good sense that places either of these two types of evidence, direct or circumstantial, in a general way on any higher or lower or different footing from the other. With respect to any evidence admitted into a trial record, whether it is direct or circumstantial, it is entitled to such weight and you are permitted to draw such reasonable inferences as your good judgment dictates in a particular case.

The weight and effect of any item or category of evidence depends not on whether it is to be categorized as direct or circumstantial but on the concrete significance of that particular piece of evidence in the trial setting and upon its intrinsic credibility and persuasive power in the light of your observations of the witnesses, your own general experience of things and your reasonable analysis of the whole record.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The government asks you to draw one set of inferences while the defendants ask you to draw another. It is for you to decide what inferences you will draw.

2 Now, the government has called as a witness
3 Jerome Healy, who, if his testimony is to be accepted, was
4 an accomplice in the crimes charged against the defendants
5 in this case.

6 In the prosecution of crime the government is
7 frequently called upon to use witnesses who are accomplices.
8 Often it has no choice. The government must rely on witnesses
9 and transactions such as they are.

10 The fact that Healy has pleaded guilty to a
11 serious crime, especially to a crime bearing on his veracity,
12 may be considered by you as bearing upon his credibility as
13 a witness in this case. His testimony should be reviewed
14 with caution and scrutinized with care. Was any of his
15 testimony a fabrication inspired by a motive of reward or
16 hostility to the defendants? Was he induced to give false
17 or colored testimony against the defendants by a promise or
18 hope or an expectation of favorable consideration by the
19 government in connection with these or other matters? If
20 you find that this was so, you are unhesitatingly to reject
21 it. However, after a cautious and careful examination of the
22 testimony of an accomplice and his demeanor on the witness
23 stand, if you are satisfied that he told the truth here as
24 to certain events, there is no reason why you should not
25 accept it as credible and act upon it accordingly.

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2 There is no requirement in the federal court
3 that the testimony of an accomplice be corroborated. The
4 government contends that the testimony of the accomplice here
5 is corroborated by other evidence with respect to key portions
6 of his testimony. However, even without regard to such
7 corroboration, conviction may rest upon the testimony of an
8 accomplice if you believe it and find it credible. It does
9 not follow that because a person has acknowledge participa-
10 tion in the crimes charged against the defendant that he is
11 incapable of giving a true version of what he testified to
12 in the case on trial.

13 Now, as I advised you at the start of this trial,
14 the indictment is merely an accusation, a charge. It is not
15 evidence or proof of a defendant's guilt, and no inference
16 of any kind may be drawn from the indictment.

17 The government has the burden of proving the
18 charges against each defendant beyond a reasonable doubt.
19 It is a burden that never shifts and remains upon the
20 government throughout the entire trial. A defendant does
21 not have to prove his innocence. On the contrary, he is
22 presumed to be innocent of the accusation contained in the
23 indictment. That presumption of innocence was in his favor
24 at the start of the trial, continued in his favor throughout
25 the trial, is in his favor even as I instruct you now, and

2 it remains in his favor during the course of your delibera-
3 tions in the jury room. It is removed only if and when you
4 are satisfied that the government has sustained its burden
5 of proving the guilt of a defendant beyond a reasonable doubt.

6 Now, what is a reasonable doubt? It is a doubt
7 based on reason, which arises from the evidence or lack of
8 evidence in the case. It is a doubt that a reasonable man
9 or woman might entertain. It is not a fanciful or specula-
10 tive doubt. It is not an imagined doubt. It is not a doubt
11 that a juror might conjure up in order to avoid performing
12 an unpleasant task or duty. It is not proof to an absolute
13 certainty. Let me repeat, it is a reasonable doubt, it is a
14 doubt that appeals to your reason, to your judgment, your
15 common understanding and your common sense. A doubt that
16 would cause you to hesitate to act in matters of importance
17 in your daily life.

18 On the other hand, the government does not have
19 to prove the guilt of a defendant beyond all possible doubt
20 or to a positive certainty. If that were the rule, few
21 people, however guilty they might be, would be convicted.

22 If, when you consider the evidence in this case,
23 you have a reasonable doubt that the government has proved
24 any element of the crime charged, then you must return a
25 verdict of acquittal. You may not return a guilty verdict

1 simply because you feel that it is more likely than not
2 that a defendant committed the crime charged. A guilty
3 verdict is only appropriate if each and everyone of you is
4 satisfied that a defendant's guilt has been proved beyond
5 a reasonable doubt.
6

7 The indictment in this case contains sixteen
8 counts or accusations. Each of the sixteen counts charges
9 a separate offense or crime. Each must be considered
10 separately.

11 It is your obligation to consider separately
12 each of the individual charges or counts in the indictment
13 and to decide whether as to each count the government has
14 or has not sustained its burden of proving beyond a reason-
15 able doubt the guilt of each defendant of the charge in that
16 particular count.

17 The indictment names three defendants. Only two
18 of these defendants are on trial before you. They are
19 William Cleary and Gustavo Passarelli. Gustavo Passarelli
20 is named in only counts 1 through 12. These are the only
21 persons whose guilt or innocence you must announce in your
22 verdict.

23 In determination of the guilt or innocence you
24 must bear in mind that guilt is personal. The guilt or
25 innocence of the defendants on trial before you must be

2 determined separately with respect to them solely on the
3 evidence presented or the lack of evidence. In other words,
4 the case against each defendant stands or falls upon the
5 proof or lack of proof of the charges against him and not
6 against someone else, although, as I will explain to you
7 shortly, in considering their guilt or innocence you may
8 have to determine the nature of the participation, if any,
9 of the other named defendants.

10 One of the defendants named in the indictment,
11 Jerome Healy, is not on trial here. He has pleaded guilty
12 in this case. That plea is a personal statement of guilt.
13 It is not an indication that the other defendants on trial
14 here are guilty, and you are not to consider this plea as
15 evidence against them.

16 Let me now turn to the indictment in this case.
17 The indictment in sixteen counts charges the defendants or
18 one of the defendants with a violation of federal laws
19 relating to the filing of false bank loan applications for
20 the purpose of influencing a bank and to the wilful misappli-
21 cation of bank funds.

22 The first count charges the two defendants before
23 you and one other named defendant, Mr. Healy, and others
24 known and unknown to the grand jury, with a conspiracy to
25 violate these laws. I will refer to the first count as the

conspiracy count.

Counts 2 through 16 charge the defendants, or one of the defendants, with substantive or actual violations of the federal laws. Counts 2 through 8 charge William Cleary with the unlawful, wilful and knowing abstraction and misapplication of bank funds, monies and credits in the amount of \$35,000. Counts 2 through 8 charges Jerome Healy and Gustavo Passarelli with aiding and abetting Cleary in the abstractions and misapplication of these funds.

Counts 9 through 12 charge Cleary, Healy and Passarelli with unlawfully, wilfully and knowingly making false statements of material facts on loan applications and financial statements for the purpose of influencing Barclay's Bank of New York.

Counts 13 through 15 charge Cleary with the unlawful, wilful and knowing abstraction and misapplication of bank funds and credits in the amount of \$20,000.

Count 16 charges Cleary, as an officer, agent and employee of Barclay's Bank, with unlawfully, wilfully and knowingly making false entries on the books, reports and statements of the said bank with the intent to injure and defraud the bank.

Now let me explain the difference between the conspiracy count and substantive counts.

2 The charge in count 1, the conspiracy count,
3 relates to a violation of federal law. These laws are set
4 out in Title 18, United States Code and Section 656 of Title
5 18 provides in pertinent part:

6 "Whoever, being an officer, director, agent or
7 employee of, or connected in any capacity with any ...
8 national bank or insured bank ... embezzles, abstracts,
9 purloins or wilfully misapplies any of the monies, funds or
10 credits of such bank or any monies, funds, assets or
11 securities intrusted to the custody or care of such bank,
12 or to the custody or care of any such agent, officer,
13 director or employee of such bank (shall be guilty of a
14 crime)."

15 Section 1014 of Title 18 provides in pertinent
16 part:

17 "Whoever knowingly makes any false statement or
18 report ... for the purpose of influencing in any way the
19 action of ... any bank the deposits of which are insured by
20 the Federal Deposit Insurance Corporation ... upon any
21 application or loan ... (shall be guilty of a crime)."

22 Let me now read count 1, which is the conspiracy
23 count.

24 "1. At all times relevant to this indictment,
25 Barclay's Bank of New York (hereinafter referred to as

Barclay's) was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

"2. At all times relevant to this indictment, Barclay's had a branch office located at 491 Main Street, New Rochelle, New York.

"3. At all times relevant to this indictment, William H. Cleary (hereinafter referred to as Cleary) the defendant, was assistant manager of Barclay's branch office located at 491 Main Street, New Rochelle, New York.

"4. At all times relevant to this indictment, Jerome F. Healy (hereinafter referred to as Healy) was an attorney.

"5. At all times relevant to this indictment, Gustavo Passarelli (hereinafter referred to as Passarelli) was the attorney and president of Westchester Avenue Marina, Inc., Westchester Avenue Used Cars, Inc. and 8626 Realty Corporation.

"6. From on or about September 1, 1975, up to and including the date of the filing of this indictment, in the Southern District of New York, the defendants Cleary, Healy and Passarelli and others both known and unknown to the grand jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, to wit,

2 violations of Title 18, United States Code, Sections 656
3 and 1014.

4 "7. It was part of said conspiracy that the
5 defendants Cleary, Healy and Passarelli would and did use
6 false statements, false signatures and other means to
7 conceal from Barclay's that the defendant Passarelli, who
8 the defendants Cleary, Healy and Passarelli well knew had a
9 bad credit rating at Barclay's, was in fact a recipient of
10 the proceeds of certain loans made by Barclay's in the name
11 of the alleged borrowers other than the defendant Passarelli.

12 "8. It was further part of said conspiracy that
13 the defendants Healy and Passarelli unlawfully and wilfully
14 and knowingly would and did make false statements of material
15 facts upon applications for loans, financial statements,
16 notes and security agreements, for the purpose of influencing
17 the action of Barclay's upon applications, advances, loans
18 and changes and extensions of the same, and that the
19 defendant Cleary, being an officer and employee of Barclay's,
20 unlawfully, wilfully and knowingly would and did abstract
21 and misapply the monies, funds and credits of Barclay's in
22 amounts exceeding \$100.

23 "9. Among the means by which the defendants and
24 their co-conspirators would and did carry out the said
25 conspiracy were the following:

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2 "(a) From on or about September 1, 1975, up to
3 and including approximately January 31, 1976, the defendants
4 Healy and Passarelli, would and did apply for, and the
5 defendant Cleary would and did approve and authorize, loans
6 from Barclay's in the name of alleged borrowers other than
7 the defendant Passarelli, the proceeds of which loans were
8 to be received by the defendant Passarelli, when the defend-
9 ants Cleary, Healy and Passarelli well knew that the
10 defendant Passarelli had a bad credit rating at Barclay's.

11 "(b) The loans referred to in paragraph 9(A) of
12 this indictment would be and were made in the names of
13 different alleged borrowers and would be and were each made
14 in the amount of \$5000, which the defendants Cleary, Healy
15 and Passarelli well knew was the maximum amount that the
16 defendant Cleary was authorized by Barclay's to lend to any
17 one customer without obtaining the approval of other officers
18 at Barclay's.

19 "(c) The defendants Healy and Passarelli would
20 and did submit to the defendant Cleary applications for
21 loans, financial statements, notes and security agreements
22 so that the loans referred to in paragraph 9(A) of this
23 indictment would appear to be regularly and properly made.
24 The applications for loans, financial statements, notes and
25 security agreements contained false statements of material

facts or bore false signatures of the alleged borrowers. The defendant Cleary did not verify the accuracy of said statements, and he never met the alleged borrowers before granting the loans.

"(d) The defendant Cleary would and did approve and authorize certain of the loans referred to in paragraph 9(A) of this indictment without having received an application for a loan or financial statement signed by the alleged borrower.

"(e) The defendant Cleary would and did give all Barclay's Bank money orders representing the proceeds of the loans referred to in paragraph 9(A) of this indictment to the defendant Healy, rather than to the alleged borrowers, and the defendant Healy would and did give said bank money orders to the defendant Passarelli."

Section 371 of Title 18 of the United States Code provides in pertinent part:

"If two or more persons conspire ... to commit any offense against the United States ... any one or more of such persons do any act to effect the object of the conspiracy, each (is guilty of a crime)."

In order to find any of the defendants guilty of a conspiracy, as charged in count 1, you must be satisfied that the government has proved the following elements beyond

a reasonable doubt.

First, you must find the existence of the conspiracy charged in count 1. In this regard, you must find that sometime between September 1, 1975, and the date of the filing of this indictment, October 27, 1976, an agreement existed between all of the alleged co-conspirators named in the indictment, or between any two of them, either to misapply bank funds or to make false statements of material facts on loan applications for Barclay's Bank in violation of Section 656 and 1014 of Title 18.

In this regard, you need not find that the conspiracy existed for the entire time mentioned in the indictment or that the agreement was to accomplish all the objectives listed in the indictment. It is sufficient if it is shown that the agreement existed for any part of the time alleged and that at least one of the overt acts was committed in furtherance thereof during the period.

Also, as I shall explain in further detail later, you need not find that all persons mentioned reached an agreement. An agreement between two defendants or between any one defendant and another alleged co-conspirator is sufficient.

Second. You must find that the defendant whose guilt or innocence you are considering knowingly and wilfully

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became a participant in the conspiracy with knowledge of its alleged criminal purpose.

Third. You must find that at least one of the alleged conspirators, not necessarily the defendant you are considering, knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

If the government fails to establish each of these three elements as to either of the defendants beyond a reasonable doubt, you must acquit that defendant as to whom the government has failed to establish any element of this count. If it succeeds as to a particular defendant, your duty is to convict that defendant on this count.

As I have informed you, the first element which you must find that the government has proved beyond a reasonable doubt is that the conspiracy charged in the indictment existed. First I want to discuss with you what the term "conspiracy" means because that term is here used in a legal context and, therefore, has a somewhat different meaning than it has when it is used colloquially.

A conspiracy is a combination or agreement of two or more persons to accomplish a criminal or unlawful purpose. The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law. Whether or not

the defendants finally accomplished what it is alleged they conspired to do is immaterial. That is to say, the government is not obliged to prove that any purpose of the conspirators was attained.

It has often been said that a conspiracy is a partnership in crime in which each member becomes the agent of every other member. To establish a conspiracy, however, the government is not required to show that the alleged conspirators sat around a table and entered into a solemn compact, orally or in writing, stating that they had formed a conspiracy to violate the law and setting forth the details of their plans. It is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy. On the other hand, mere similarity of conduct among certain persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

If, upon consideration of all the evidence, direct and circumstantial, testimonial and documentary, you find beyond a reasonable doubt that the minds of at least two

2 of the alleged conspirators met in an understanding way and
3 that they agreed, as I have explained a conspiratorial agree-
4 ment to you, to work together in furtherance of the unlawful
5 scheme alleged in the indictment, then proof of the existence
6 of the conspiracy is satisfied.

7 Now, if you find that the conspiracy existed
8 beyond a reasonable doubt, then you must consider the second
9 element of the conspiracy count, that is, whether the govern-
10 ment has established beyond a reasonable doubt that the
11 defendant whose guilt or innocence you are considering
12 knowingly and wilfully became a participant in the conspiracy
13 with knowledge of its alleged criminal purpose.

14 You may not assume that a defendant joined the
15 conspiracy simply because you are convinced that he knew or
16 was associated or had other dealings with people who
17 conspired to violate the law.

18 I charge you that mere association, even close
19 or repeated association, with some other alleged member of
20 the conspiracy is not sufficient in and of itself to support
21 a finding that a defendant was a member of the alleged
22 conspiracy.

23 In addition, I instruct you that none of the
24 following is sufficient in and of itself to support a finding
25 that a defendant was a member of the alleged conspiracy:

mere attendance at a meeting with a co-conspirator or mere presence at the scene or mere knowledge of the conspiratorial acts or objectives or mere unwitting participation.

The mere fact that two or more persons are on trial together cannot be considered in any way as indicating that they participated in a conspiracy to violate the law.

In order to find a defendant guilty on the conspiracy count, you must find beyond a reasonable doubt that the defendant acted knowingly and wilfully. Specifically, you must find that the defendant knowingly and wilfully became a participant in the conspiracy with knowledge of its unlawful purpose and intending to bring about its success.

Knowledge and wilfullness and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have of arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge, wilfullness and intent were present at the time in question.

An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence or other innocent reason.

An act is wilful if it is done knowingly,

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deliberately and with an evil purpose.

An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of an evil purpose or for some other innocent reason.

It is not necessary for you to find that a defendant knew he was breaking a particular law and whether or not an act is knowing or wilful has nothing to do with the defendant's personal or private reasons for committing the act, so long as the act is done with an evil purpose.

It is not necessary, moreover, that you find that each conspirator was fully informed as to all the details or the full scope of the conspiracy, or participated in every aspect of the conspiracy.

Once you have found that a conspiracy existed and a particular defendant to have knowingly and wilfully participated in it with knowledge of its unlawful purpose, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

Similarly, it is not required that a person be a member of the conspiracy from its very start. A defendant

may join a conspiracy at any point while it is in progress and be held responsible for all that has been done before he joins and all that may be done thereafter during the existence of the conspiracy and while he remains a member of the conspiracy.

Now let me instruct you as to how you are to consider the acts and statements of alleged co-conspirators.

You will recall that during the trial the acts and statements of one alleged co-conspirator in the absence of the other alleged co-conspirator were received only in respect to that particular person.

Now, if you find that a conspiracy existed, then in considering the second element, whether or not a particular defendant was a member of the conspiracy, you may rely not only on his own statements but on the statements and declarations of the other alleged co-conspirators.

Moreover, if you find that a conspiracy existed, then any act or declaration made during the conspiracy and in furtherance of it by a person found by you to have been a member of the conspiracy may be considered against the defendant whom you have found was also a member even though such act or declaration was made in the absence and without the knowledge of that defendant.

Conversely, such acts or declarations of a

2 conspiracy which were made before the existence or after the
3 termination of the conspiracy or which were not in furtherance
4 of the conspiracy may be considered only against the person
5 who has made them.

6 Now we come to the third element you must
7 consider as to count 1. If you have found that the alleged
8 conspiracy existed and that the defendant whose guilt you
9 are considering was a member of it, then you must consider
10 the "overt acts" requirement. The offense of a conspiracy
11 is complete when the unlawful agreement is made and any single
12 overt act is done by one of the alleged co-conspirators in
13 furtherance of the conspiracy.

14 By the term "overt act," we mean an act committed
15 in an effort to accomplish some object or purpose of the
16 conspiracy. The overt act in this sense need not be a crime
17 in itself. It must, however, be an act which follows from
18 the conspiracy and it is directed towards the accomplishment
19 of the criminal purpose of the conspiracy.

20 Now let me read the overt acts which are charged
21 in the indictment.

22 "The following overt acts, among others, were
23 committed in the Southern District of New York in furtherance
24 of said conspiracy:

25 "(a) On or about September 26, 1975, the defendant

1 Cleary gave to the defendant Healy a Barclay's Bank money
2 order in the amount of \$5000 and payable to Mary Roccario. 3

4 "(b) On or about September 26, 1975, the
5 defendant Healy gave to the defendant Passarelli a Barclay's
6 Bank money order in the amount of \$5000 and payable to Mary
7 Roccario.

8 "(c) On or about October 22, 1975, the defendant
9 Cleary gave to the defendant Healy a Barclay's Bank money
10 order in the amount of \$5000 and payable to the 8626 Realty
11 Corporation.

12 "(d) On or about October 22, 1975, the defendant
13 Healy gave to the defendant Passarelli, a Barclay's Bank
14 money order in the amount of \$5000 and payable to 8626
15 Realty Corporation.

16 "(e) On or about October 27, 1975, the defendant
17 Cleary gave to the defendant Healy a Barclay's Bank money
18 order in the amount of \$5000 and payable to the Westchester
19 Avenue Marina, Inc.

20 "(f) On or about October 27, 1975, the defendant
21 Healy gave to the defendant Passarelli a Barclay's Bank
22 money order in the amount of \$5000 and payable to the West-
23 chester Avenue Marina, Inc.

24 "g" On or about November 12, 1975, the defendant
25 Cleary gave to the defendant Healy a Barclay's Bank money

2 order in the amount of \$5000 and payable to Carl French.

3 "(h) On November 12, 1975, the defendant Healy⁴⁸
4 gave to the defendant Passarelli a Barclay's Bank money order
5 in the amount of \$5000 and payable to Carl French.

6 "(i) On or about November 13, 1975, the defend-
7 ant Cleary gave to the defendant Healy a Barclay's Bank
8 money order in the amount of \$5000 and payable to Joseph
9 Passarelli.

10 "(j) On or about November 14, 1975, the
11 defendant Healy gave to the defendant Passarelli a Barclay's
12 Bank money order in the amount of \$5000 and payable to Joseph
13 Passarelli.

14 "(k) On or about November 25, 1975, the
15 defendant Cleary gave to the defendant Healy a Barclay's
16 Bank money order in the amount of \$5000 and payable to
17 Thomas Powers.

18 "(l) On or about November 25, 1975, the defend-
19 ant Healy gave to the defendant Passarelli a Barclay's Bank
20 money order in the amount of \$5000 and payable to Thomas
21 Powers.

22 "(m) On or about December 15, 1975, the
23 defendant Cleary gave to the defendant Healy a Barclay's
24 Bank money order in the amount of \$5000 payable to the
25 Westchester Used Cars, Inc.

"(n) On or about December 15, 1975, the defendant Healy gave to the defendant Passarelli a Barclay's Bank money order in the amount of \$5000 and payable to the Westchester Avenue Used Cars, Inc."

In addition, the government must show that at least one overt act was committed in the Southern District of New York. I charge you that the Southern District of New York includes Manhattan, the Bronx and Westchester County, New York.

If you find beyond a reasonable doubt that such a conspiracy existed as charged in the indictment and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy offense is complete. It is complete as to each defendant found by you, the jury, beyond a reasonable doubt to have knowingly and wilfully been a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in count 1 that the conspiracy existed from on or about September 1, 1975, and continuously thereafter up to and including October 27, 1976, I repeat that it is not essential for the government to prove

2 that the conspiracy started and ended on or about those
3 specific dates. It is sufficient if you find that in fact a
4 conspiracy was formed and existed for some substantial time
5 within the period set forth in the indictment and that at
6 least one overt act was committed in furtherance thereof in
7 that period.

8 Similarly, it is not necessary for the government
9 to prove that each member of the conspiracy committed or
10 participated in any particular overt act since the act of any
11 member of the conspiracy done in furtherance of the con-
12 spiracy becomes the act of all the other members.

13 Now let me turn to the substantive counts in the
14 indictment. Because they involve the same statute I will
15 read counts 2 through 8 and counts 13 through 15 together.

16 Counts 2 through 8 charge that:

17 "1. On or about the dates hereinafter set forth
18 in counts 2 through 8, in the Southern District of New York,
19 William H. Cleary, the defendant, being then an officer and
20 employee of the Barclay's Bank of New York, 491 Main Street,
21 New Rochelle, New York, a bank the deposits of which were
22 then insured by the Federal Deposit Insurance Corporation,
23 did unlawfully and wilfully and knowingly abstract and mis-
24 apply the monies, funds and credits of said bank in amounts
25 exceeding \$100, to wit, the amounts hereinafter set forth in

each of counts 2 through 8, by approving the loan hereinafter described in counts 2 through 8.

"On or about the dates hereinafter set forth in counts 2 through 8 in the Southern District of New York, Jerome F. Healy and Gustavo Passarelli, the defendants, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure William H. Cleary, the defendant, to commit offenses against the United States set forth in the preceding paragraphs and counts 2 through 8."

Counts 2 through 8 refer to September 26, 1975, Mary Roccario; October 22, 1975, 8626 Realty Corporation; October 27, 1975, the Westchester Avenue Marina, Inc.; November 12, 1975, Carl French; November 13, 1975, Guiseppi Passarelli; November 25, 1975, Thomas Powers; December 15, 1975, Westchester Avenue Used Cars, and the amount that it is charged was abstracted and misapplied in each case is \$5000.

Counts 13 through 15. Count 13 is the same as the preceding one in count 8, and then it says:

"On or about the dates hereinafter set forth in counts 13 through 15, in the Southern District of New York, Jerome Healy, the defendant, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure William H. Cleary, the defendant, to commit offenses against the United States set forth in the preceding paragraph.

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2 What I want to bring out is that Mr. Passarelli
3 is only charged in counts 2 through 8, he is not charged
4 in counts 13 through 15. Those counts refer to the October
5 9, 1975, Jerome Healy, \$5000, July 9, 1975, with regard to
6 Hogan, and December 12, 1975, Margaret Fletcher, all in the
7 sum of \$5000.

8 With respect to these counts, the applicable
9 statute is the one I have already read to you in connection
10 with count 1, namely, Section 656 of Title 21 of the United
11 States Code. Let me read it once again in pertinent part.

12 "However, being an officer, director, agent or
13 employee of, or connected in any capacity with any ...
14 national bank or insured bank .. embezzles, abstracts,
15 purloins or wilfully misapplies any of the monies, funds or
16 credits of such bank or any monies, funds, assets or
17 securities intrusted to the custody or care of such bank,
18 or to the custody or care of any such agent, officer,
19 director or employee (shall be guilty of a crime)."

20 In order to return a verdict of guilty for the
21 crimes charged in counts 2 through 8 and 13 through 15, you
22 must find four elements to have been proved beyond a
23 reasonable doubt:

24 First you must find beyond a reasonable doubt
25 that on or about the date specified in each count William

1 H. Cleary was an officer, director, agent or employee of
2 Barclay's Bank.
3

4 Second, you must find beyond a reasonable doubt
5 that on or about the date specified in each count Barclay's
6 Bank was a bank the deposits of which were then insured by
7 the Federal Deposit Insurance Corporation.

8 Third, you must find beyond a reasonable doubt
9 that on or about the date specified in each count William
10 Cleary wilfully misapplied or caused the misapplication of
11 monies, funds or credits of the Barclay's Bank.

12 And fourth, finally, you must find beyond a
13 reasonable doubt that in wilfully misapplying or causing the
14 misapplication of such monies, funds or credits, Cleary
15 acted with the intent to injure or defraud the Barclay's
16 Bank of New York and with the knowledge and intent that the
17 misapplication of funds or credit exposed Barclay's Bank to
18 jeopardy of loss.

19 Now, there seems to be no controversy as to the
20 first two elements -- that Cleary was an officer of a
21 federally insured bank, but you must still be satisfied that
22 the government has proved beyond a reasonable doubt that at
23 the time of each misapplication charged William Cleary was
24 an officer or employee of a federally insured bank.

25 As to the third element, the government must prove

beyond a reasonable doubt that William Cleary wilfully misapplied or caused the misapplication of bank funds. As I told you before, an act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of evil purpose or for such other innocent reason.

A wilful misapplication of monies, funds or credits by an officer or employee intentionally causes bank funds to be used for his own benefit and he misapplies bank funds when he intentionally causes funds to be used for the benefit of third parties when the bank official knows that the debtor named on the bank application is either fictitious or wholly unaware that his name is being used. Similarly, if the officer knows that the named debtor is financially incapable of repaying the loan whose proceeds are passed on to a third party or where the named debtor, regardless of his financial capability, is assured that the bank will look only to the third party who actually received the loan proceeds, a wilful misapplication of bank funds has occurred.

On the other hand, where the named debtor is financially capable, fully understands that it is his responsibility to repay the loan and has consented to the loan, a loan to him cannot, absent other circumstances, be considered a sham or wilful misapplication, even if the bank official

knew that the funds would be turned over to a third party.

Moreover, you are instructed that it is not forgery to sign another person's name to a document if it is done with the authority of the person whose name is signed to the document.

Now, you have to consider whether the loans made by William Cleary were in fact unauthorized. You may consider whether these loans were in violation of bank procedures which Cleary knew about. You may also consider whether Cleary knew, when he approved the loans, that material facts stated on the loan applications were misrepresented.

If you should find that William Cleary wilfully misapplied monies, funds or credits of Barclay's Bank, you must then consider whether he acted with an intent to injure or defraud the bank. For each count in which the defendant is charged with the misapplication of funds, the government must prove beyond a reasonable doubt that the defendant acted with an intent and knowledge that the bank would be injured or defrauded. Intent to injure or defraud does not mean malice or ill will. It means to act knowingly and with the specific intent to deceive or cheat, for the purpose of either causing financial loss to another, or bringing about some financial gain to one's self.

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2 Even if it was not Mr. Cleary's purpose to injure
3 or defraud Barclay's Bank, if he knew that the natural
4 effect of his actions would be to expose the bank to loss,
5 injury or fraud, the requisite intent is established. In
6 deciding the question of defendant Cleary's intent, you
7 must consider all the facts and circumstances of the case.

8 The government need not establish that Barclay's
9 Bank actually suffered any loss as a result of the mis-
10 application of its funds. Thus, it is immaterial to your
11 consideration that funds or monies, once misapplied, may
12 ultimately have been repaid.

13 A defendant may be found guilty of the crimes
14 charged here if he has aided or abetted the commission of the
15 crime in violation of Title 18, United States Code, Section
16 2. This provides that:

17 "Whoever commits an offense against the United
18 States or aids, abets, counsels, commands, induces or pro-
19 cures its commission, is punishable as a principal.

20 "Whoever wilfully causes an act to be done which,
21 if directly performed by him or another, would be an offense
22 against the United States, is punishable as a principal."

23 Thus, a person who aids or abets another to
24 commit an offense is just as guilty of that offense as he
25 would be had he committed it himself.

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2 Before you can conclude that a person aided or
3 abetted, you must first find that the substantive crime
4 charged -- in this instance the wilful misapplication of bank
5 funds by an officer or employee of that bank -- was in fact
6 committed.

7 Secondly, you must determine that the defendant
8 in some way knowingly and intentionally associated himself
9 with the criminal venture, that he participated in it as
10 something he wished to bring about and that by his actions
11 he tried to make the crime successful. You must find more
12 than the defendant's mere presence or knowledge of the
13 offense.

14 In other words, if one, fully aware of what he
15 is doing, plays a significant role in furthering and
16 facilitating an act prohibited by law, he is equally as
17 guilty as the person who actually and physically performed
18 the act or acts, even though the latter played a greater part
19 in the perpetration of the crime.

20 Accordingly, you may find both the defendants
21 guilty of the offenses charged in counts 2 through 8 if you
22 find that Mr. Cleary committed the offense charged and that
23 Mr. Passarelli aided and abetted him.

24 Now let me remind you again that you need to
25 consider whether Mr. Passarelli aided and abetted Mr. Cleary

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2 in the wilful misapplication of bank funds only with respect
3 to counts 2 through 8. He is not charged with aiding and
4 abetting and misapplication with regard to counts 13 through
5 15.

6 Now we will turn to counts 9 through 12.

7 Let me read those to you.

8 "On or about the dates herein set forth in counts
9 9 through 12, in the Southern District of New York, William
10 H. Cleary, Jerome F. Healy and Gustavo Passarelli, the
11 defendants, unlawfully, wilfully and knowingly did make
12 false statements of material facts upon applications for
13 loans and financial statements for the purpose of influencing
14 the action of Barclay's Bank of New York, a bank the deposits
15 of which were then insured by the Federal Deposit Insurance
16 Corporation, upon applications, advances, loans and changes
17 and extensions of the same."

18 9 refers to the Mary Roccario transaction, the
19 name on the application, September 26; 10 refers to October
20 22, Carmine Liberatore; 11, November 12, 1975, Carl French;
21 and 12, November 25, 1975, Thomas Powers.

22 And again on each application the loan in question
23 is \$5000.

24 Each defendant is charged in counts 9 through 12
25 with violating Section 1014 of Title 18 of the United States

Code. Once again that statute reads in pertinent part as follows:

"Whoever knowingly makes any false statement or report ... for the purpose of influencing in any way the action of ... any bank the deposits of which are insured by the Federal Deposit Insurance Corporation .. upon any application or loan (shall be guilty of a crime)."

With respect to these counts, the government must establish beyond a reasonable doubt each of the following four elements:

First, you must find beyond a reasonable doubt that on or about the time specified in the indictment, the defendant you are considering made, or caused to be made, a false statement or report on a loan application to the Barclay's Bank of New York.

Second, you must find beyond a reasonable doubt that the defendant you are considering knew the statement or report was false.

Third, you must find beyond a reasonable doubt that the false statement or report was made for the purpose of influencing the bank's action on the loan application.

Fourth, you must find beyond a reasonable doubt that the false statement or report was made in connection with a loan application to a bank the deposits of which were then

2 insured by the Federal Deposit Insurance Corporation.

3 As to this last element, there is no issue since
4 a stipulation was entered into which was read to you during
5 the trial that the Barclay's Bank was such a bank, but you
6 still have to find it established beyond a reasonable doubt.

7 I instruct you that it is not necessary for the
8 government to prove that the defendant knew that the bank
9 was so insured. Thus, you are concerned with the first three
10 essential elements.

11 The essence of the crime is the making of a false
12 statement in an application for a loan for the purpose of
13 influencing in any way the action of the bank from which
14 the loan is sought. It is not dependent upon the accomplish-
15 ment of that purpose.

16 The law focuses on the application for a loan
17 and the statements contained therein. Thus, it requires
18 that such statements which have the capacity of influencing
19 in any way the action of a bank from which the loan is sought
20 be accurate or not knowingly false.

21 The statute does not require proof that the bank
22 officials relied upon the alleged false statement. It has
23 nothing whatsoever to do with defrauding the bank or whether
24 or not the bank is actually defrauded. Thus, it is of no
25 consequence whether or not the loan was granted or, if granted,

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2 that it was subsequently paid and that the bank suffered no
3 loss. The fact that no pecuniary losses may have been
4 sustained by the bank is not relevant under this law.

5 As to the second element, the statute, as I read it to
6 you, refers to one "who knowingly makes any false statement."

7 The law does not punish a person who makes a
8 false statement inadvertently or negligently. Thus, before
9 you find that the government has established the second
10 element that the defendant acted knowingly, you must be
11 satisfied beyond a reasonable doubt that the defendant, in
12 causing the statement, if you do find it was false, acted
13 deliberately, intentionally and understandingly, that is, that
14 he knew what he was doing and that he knew that the statement
15 was false.

16 In deciding the question of the defendant Cleary's
17 intent, you must consider all the facts and circumstances
18 of the case. Guilty knowledge cannot be established by
19 demonstrating merely negligence or foolishness on the part
20 of the defendant. However, it is not necessary that the
21 government prove to a certainty that the defendant knew that
22 the loan applications contained false statements. The element
23 of knowledge of a given fact may be satisfied by proof that
24 the defendant acted with deliberate disregard of the truth,
25 unless he actually believed the contrary was true.

As to the third element, the government must establish that the defendant made or caused such false statements to be made "for the purpose of influencing in any way" the bank's actions.

The quoted words almost define themselves. The emphasis of the statute is upon the person making the false statement. Thus, to act "for the purpose of influencing" the bank means that the person making a false statement to the bank intended thereby that the bank take action thereon.

Once again, a person who aids or abets another to commit an offense is just as guilty of that offense as he would be had he committed it himself. Before you conclude a person aided or abetted, you must first find that the substantive crime charged -- in this instance the filing of false loan applications -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful.

You must find more than the defendant's mere presence during or knowledge of the offense.

I am repeating what I have said before. In other words, if one, fully aware of what he is doing, plays a

significant role in furthering and facilitating an act prohibited by law, he is equally as guilty as the person who actually and physically performs the act or acts, even though the latter played a greater part in the perpetration of the crime.

The government contends that Passarelli aided and abetted both Healy and Cleary in the filing of false loan applications.

You will also recall that I told you that a conspirator is liable for the acts and statements of his co-conspirators provided they were made during the scope of the unlawful agreement as he saw it during the pendency of the conspiracy and in furtherance of its objectives. Therefore, if you find beyond a reasonable doubt that the defendant whose guilt or innocence you are considering participated in the conspiracy charged in count 1, then you may find that defendant guilty of the charges in the other counts of the indictment in which he is named if you find beyond a reasonable doubt that the crime charged in those counts were committed by either one of the other defendants during the course and in furtherance of the conspiracy.

Thus, even if you find that the defendant Passarelli did not actually aid and abet Mr. Cleary in the crime of wilful misapplication of bank funds as charged in

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counts 2 through 8, you may nonetheless find him guilty of

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that offense if you find beyond a reasonable doubt that an

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unlawful conspiracy existed of which Passarelli was a member

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and that the offense was committed in furtherance of that

6

conspiracy.

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To find Passarelli guilty of the crime of wilful

8

misapplication of bank funds as charged in counts 2 through

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8 of the indictment, you must find beyond a reasonable

10

doubt:

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First: that on or about the times specified in

12

the indictment, William Cleary was an officer or employee

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of Barclay's Bank.

14

Second: that on or about the time specified in

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the indictment, William Cleary wilfully misapplied funds,

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monies or credits of Barclay's Bank.

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Third: that on or about the time specified in

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the indictment, a conspiracy existed to have Cleary wilfully

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misapply the funds, monies or credits of Barclay's Bank.

20

Fourth: that Mr. Cleary was a member of the same

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conspiracy.

22

Fifth: that Mr. Cleary's wilful misapplication

23

of the funds, monies or credits of the bank was a crime

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committed in furtherance of that conspiracy.

25

Similarly, even if you find that the defendants

Passarelli and Cleary did not physically commit, or aid and abet the commission of, the crime of making false statements of fact on loan applications to Barclay's Bank for the purpose of influencing its action, you may nevertheless find them guilty of the substantive offenses charged in counts 9 through 12 if you find beyond a reasonable doubt that they were committed in furtherance of and during the course of the unlawful conspiracy in which they were members.

You may also find Passarelli and Cleary guilty of the crime of making false statements in loan applications as charged in those counts if you find beyond a reasonable doubt:

First: that on or about the dates specified Healy made the false statements of fact on the loan applications for the purpose of influencing the actions of the bank;

Second: that on or about the times specified a conspiracy existed to make the false statements for the purpose of influencing the bank;

Third: that the defendant you are considering was a member of the conspiracy;

Fourth: that Healy was a member of the same conspiracy to make false statements of fact;

Fifth: and that Healy's filing the false

2 application was a crime committed in furtherance of the same
3 conspiracy.

4 Let me now turn to count 16, the final count in
5 the indictment.

6 This reads as follows:

7 "On or about October 10, 1975, in the Southern
8 District of New York, William H. Cleary (hereinafter
9 referred to as Cleary) the defendant, being an officer, agent
10 and employee of Barclay's Bank of New York, a bank the
11 deposits of which were then insured by the Federal Deposit
12 Insurance Corporation, unlawfully, wilfully and knowingly
13 and with intent to injure and defraud said bank and to
14 deceive officers of said bank, did make and cause to be made
15 false entries in the books, reports and statements of said
16 bank in that, when the Installment Loan Department at
17 Barclay's Bank of New York rejected an installment loan in
18 the amount of \$5000 to Jerome F. Healy, the proceeds of which
19 loan the defendant Cleary had already given to the defendant
20 Healy, the defendant Cleary changed said installment loan
21 to a time loan and backdated the note for the time loan -- to
22 the date on which the defendant Cleary had given the defendant
23 Healy the proceeds of said installment loan.

24 "2. On or about October 10, 1975, in the
25 Southern District of New York, the defendant Healy did

unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure the defendant Cleary to commit the offenses set forth in this count.

Count 16 charges Cleary with violating Title 18, United States Code, Section 1005, and that statutes reads in pertinent part:

"Whoever, being an officer, director, agent, or employee of any ... insured bank makes any false entry in any book, report, or statement of such bank with intent to injure or defraud such bank ... or to deceive any officer of said bank ... (shall be guilty of a crime)."

To convict the defendant Cleary of this offense, the government must establish beyond a reasonable doubt the following elements:

(1) that Cleary was an officer, director, agent or employee of the bank whose deposits were then insured by the Federal Deposit Insurance Corporation;

(2) that the defendant Cleary made a false entry on a book, report or statement of the bank knowing that entry was false; and

(3) that the defendant Cleary intended to injure or defraud the bank, or to deceive any officer of said bank.

The government contends that by changing the note that Healy was granted from an installment loan to a

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2 time loan and by backdating the date of the time loan to
3 October 9, 1975, the defendant Cleary violated this statute.
4 The government need not prove that the defendant acted both
5 with the intent to deceive officers of the bank and with the
6 intent to injure or defraud the bank. It need only prove
7 beyond a reasonable doubt that the defendant did one or the
8 other, that is, he either acted with the intent to deceive
9 the bank officers or that he acted with the intent to injure
10 or defraud the bank.

11 Now, there has been some testimony by George
12 von Bernewitz that in 1974 Mr. Cleary had exceeded his
13 authority in making loans at the Chemical National Bank.

14 Let me repeat here the instructions I gave you
15 at that time. The defendants are not being charged with acts
16 done in 1974, and you cannot use those acts to determine
17 whether they committed the crimes charged in the indictment.

18 Nor may evidence of an alleged earlier similar
19 act be considered for any other purpose whatsoever unless
20 you first find from the other evidence in the case standing
21 alone that it establishes beyond a reasonable doubt that the
22 accused did a particular act charged in the indictment in
23 this case.

24 However, if you do find beyond a reasonable doubt
25 based solely on the evidence other than the prior similar acts

1 or the testimony of Mr. Von Bernewitz that Cleary did the
2 acts charged in the indictment, then you may consider the
3 evidence as to the prior similar acts in determining the
4 state of mind or the intent of the defendant at the time he
5 did those acts that are charged in the indictment; that is
6 to say, if prior similar acts have been established by the
7 government, then you may, but you are not obliged to, draw
8 the inference that, in doing the act charged here, the
9 accused acted knowingly and intentionally and not because
10 of mistake or accident or any other innocent reason.

12 I charge you that the evidence here as to a
13 prior similar act can only apply to the defendant Cleary and
14 may not be used against the defendant Passarelli.

15 Now let me address myself to more general con-
16 siderations which you must bear in mind during your
17 deliberations.

18 First, I must emphasize again that there are two
19 defendants on trial here and you must consider separately
20 whether the defendants charged have been proved guilty
21 beyond a reasonable doubt.

22 It is your duty to give separate, personal
23 consideration to the case of each defendant. When you do so,
24 you should analyze what the evidence in the case shows with
25 respect to that individual, leaving out of consideration

1 entirely any evidence admitted solely with regard to the other
2 defendant. Each defendant is entitled to have his case
3 determined from the evidence as to his own acts, statements
4 and conduct, and any other evidence in the case which may be
5 applicable to him. The fact that you may find one of the
6 accused guilty or not guilty of any particular count should
7 not influence your verdict with respect to the other
8 defendant or with respect to any other count.

9
10 As I told you before, the government has the
11 burden of proving the charges against each defendant beyond
12 a reasonable doubt. A defendant does not have to prove his
13 innocence. A defendant has the right to remain silent. He
14 does not have to testify or present any evidence or witnesses
15 in his behalf, and you may not draw any inference or conclu-
16 sion or form any prejudice because a defendant did not
17 testify.

18 On the other hand, the law permits a defendant
19 to testify in his own behalf if he wishes to do so, and
20 both Mr. Cleary and Mr. Passarelli have elected to testify
21 in this case.

22 The testimony of a defendant must be considered
23 by you as would the testimony of any other witness. You
24 must determine, therefore, the credibility of Cleary's and
25 Passarelli's testimony and in so doing you must consider the

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2 deep personal interest which every defendant has in the out-
3 come of his case. Indeed, it is fair to say that a defendant
4 has a greater stake in the outcome. A defendant's interest
5 in the result of his trial is of a character possessed by
6 no other witness. That interest requires that you receive
7 such testimony with caution and subject it to the most
8 careful scrutiny. However, it by no means follows that
9 simply because a person has a vital interest in the end
10 result that he is not capable of telling a truthful and
11 straightforward story, and it is for you decide to what
12 extent, if at all, his interest has affected or colored
13 his testimony.

14 Under your oath as jurors, you cannot allow a
15 consideration of the punishment which may be inflicted upon
16 a defendant to influence your verdict in any way or in any
17 sense enter into your deliberation.

18 The duty of imposing sentence rests exclusively
19 upon the Court. Your function is to weigh the evidence in
20 the case and determine the guilt or innocence of the defend-
21 ants solely upon the basis of such evidence and the law.

22 You are decide the case upon the evidence and
23 the evidence alone, and you must not be influenced by any
24 assumption, conjecture, or sympathy, or any inference not
25 warranted by the facts.

2 If you fail to find beyond a reasonable doubt
3 that the law has been violated, you should not hesitate for
4 any reason to find a verdict of acquittal, and, on the
5 other hand, if you should find that the law has been violated
6 as charged, you should not hesitate because of sympathy or
7 any other reason to render a verdict of guilty.

8 I would like to point out you should not enter
9 the jury room with any preconceived pride of opinion. You
10 should not be unwilling to be convinced by intelligent
11 argument with your fellow jurors. Each juror has to answer
12 to his or her own conscience and each has to decide this
13 case for himself or herself, but in so doing you should be
14 willing to consider the views of the other jurors and talk
15 things out and try your best to reach a unanimous agreement.

16 Your verdict must be one with which each juror
17 agrees.

18 If during your deliberation you deem it necessary
19 to have a copy of the indictment or desire any of the
20 exhibits, they will be sent in to you on request. If you
21 wish any portion of the testimony read or the Court's charge
22 reread, that will be done.

23 In conclusion, let me say that every criminal
24 case is important. It is important to the government and
25 it is important to the defendants. It is your obligation to

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decide the case on the evidence and on the law as I have charged it to you and I give the case to you with the assurance that you will do just that.

Now, the procedure, one more step before I give the case to you, I have read my charge and counsel have the right to go over the charge with me to bring up if I have made misstatements or they want to object or so forth. So we will retire to the robing room where counsel will go over the charge with me. If I have to make any corrections I will. If I decide not to, I will give the case to you.

(In the robing room.)

THE COURT: All right, let's start with Mr. Murphy.

MR. MURPHY: I have two objections and one comment, your Honor.

My objections are to the Pinkerton charge, which I made previously, and you stated in the course of your misapplication definition that exposure to loss is sufficient.

I had a problem with exposure to loss, because in any loan there is obviously an exposure to loss, and to that extent I would object to that portion of it.

THE COURT: I said intentional exposure to loss. I think that is entirely different. In the abstract you are right. In any event, I am not changing it.

11-188T-1-01

BRANCH 5000 30 days 11/13 1975

WRITE AFTER DATE, FOR VALUE RECEIVED, PROMISE TO

APPROVAL PAY TO THE ORDER OF BARCLAYS BANK OF NEW YORK

WRITE four thousand 00/100 DOLLARS

WRITE BARCLAYS BANK OF NEW YORK WRITE OFFICE

REVIEWED 8.50

R
A
T
E 8.14

RECOMMENDATION
ARNOLD
WHOLESALE
PAY

UPON THE OCCURRENCE, WITH RESPECT, TO ANY MAKER OR ANY ENDORSER OR GUARANTOR OF THIS NOTE, OF ANY OF THE EVENTS SPECIFIED IN SECTION 151 OF THE EIGHTH CHAPTER OF THE LAW OF NEW YORK STATE, OR IF ANY MAKER, ENDORSER OR GUARANTOR HEREIN SHALL SUSPEND BUSINESS, BECOME INSOLVENT, OFFER SETTLEMENT TO ANY CREDITORS, COMMIT ANY ACT OF BANKRUPTCY, OR MAKE OR SEND NOTICE OF ANY SUCH ACT TO ANY CREDITORS, OR MAKE AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS, OR MORTGAGE, PLEDGE OR TRANSFER OF ACCOUNTS RECEIVABLE, OR OTHER PROPERTY, OR MAKE ANY FALSIFICATION OR REPRESENTATION ORALLY OR IN WRITING, OR FAIL TO FURNISH INFORMATION, OR FAIL TO PERMIT INSPECTION OF ANY BOOKS OR RECORDS ON DEMAND OF THE BANK, OR FAIL TO PAY ON DEMAND, OR WHEN DUE, OR THERE BE FILED BY OR AGAINST THE OBLIGOR ANY PETITION IN BANKRUPTCY PROCEEDING UNDER ANY LAW RELATING TO THE RELIEF OF DEBTORS, OR THE APPOINTMENT OF A RECEIVER, OR OF ANY PROPERTY, OR IF A WARRANT OF ATTACHMENT BE ISSUED AGAINST ANY OF THEIR PROPERTY, OR ANY JUDGMENT BE ENTERED AGAINST THEM, OR IF AN INDIVIDUAL SHALL DIE, OR IF A CORPORATION, PARTNERSHIP OR ITS CAPITAL BE IMPAIRED, OR IF FOR ANY OTHER CAUSE THE BANK IN ITS SOLE DISCRETION DEEMS THIS OBLIGATION IN PROPERTY OR ANY OTHER OBLIGATION OF ANY MAKER, ENDORSER OR GUARANTOR HEREIN IN JEOPARDY, OR IF FOR ANY OTHER CAUSE THE PROTECTION OF THE SAID BANK IN ITS SOLE DISCRETION SO REQUIRES, ALL LIABILITIES OF THE UNDERSIGNED TO THE SAID BANK, IN RESPECT OF THIS NOTE, SHALL AT THE OPTION OF THE SAID BANK MATURE FORTHWITH AND BECOME DUE AND PAYABLE WITHOUT DELAY OR NOTICE, WHICH ARE HEREBY WAIVED. PAYEE SHALL AT ALL TIMES HAVE A LIEN UPON THE DEPOSIT BALANCES OF ANY MAKER OR ENDORSER HEREOF, AND MAY AT ANY TIME, WITHOUT NOTICE, APPLY THE SAME AGAINST PAYMENT OF THIS NOTE OR ANY OTHER OBLIGATIONS OF SUCH MAKER OR ENDORSER HEREOF, DIRECT OR CONTINGENT, WHETHER DUE OR NOT. PAYEE SHALL AT ALL TIMES HAVE A LIEN ON ALL PROPERTY OF ANY MAKER OR ENDORSER HEREOF OR THE PROCEEDS THEREOF HELD OR RECEIVED BY OR FOR THE PAYEE FOR ANY PURPOSE INCLUDING SAFEKEEPING, CUSTODY, TRANSMISSION, COLLECTION, PLEDGE OR PLACED IN ANY SAFE DEPOSIT BOX LEASED BY PAYEE TO ANY MAKER OR ENDORSER HEREOF. IN THE EVENT OF ANY OF THE EVENTS ABOVE SET FORTH PAYEE MAY SELL ALL OR PART OF ANY MAKER'S OR ENDORSER'S PROPERTY AT ANY BROKER'S BOARD, EXCHANGE OR AT A PUBLIC OR PRIVATE SALE, AT ANY DEMAND, NOTICE OR ADVERTISEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY WAIVED, AND MAY PURCHASE AT SUCH SALE. IF THIS NOTE IS SIGNED BY TWO OR MORE PERSONS, THEY SHALL BE JOINTLY AND SEVERALLY LIABLE. IN CASE OF DEFAULT THERE SHALL BE ADDED TO THE AMOUNT DUE ON THIS NOTE THE COST OF COURT PROCEEDS INCLUDING ATTORNEY'S FEE OF 20% OF THE AMOUNT DUE FOR THE COLLECTION THEREOF, WHICH ARE HEREBY DEEMED REASONABLE.

VALUE RECEIVED 12-15-75 DUE

Giusepp. Passacelli 2 BARTON PLACE PART CRESTON NY

9x21

11-1112-4-01

ANCH

\$ 5000 -

N. Y., 12/9 1975

WRNTO

60 Days

AFTER DATE, FOR VALUE RECEIVED, PROMISE TO

APPROVAL

PAY TO THE ORDER OF BARCLAYS BANK OF NEW YORK

Five Thousand

v 00/100

DOLLARS

WKE

AT BARCLAYS BANK OF NEW YORK OFFICE.

REVIEWED

fuk

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8.50

RECOMMENDATION

Upon the occurrence, with respect, to any maker or any endorser or guarantor of this note, of any of the events specified in Section 151 of the Debtor and Creditor Law of New York State, or if any maker, endorser or guarantor herein shall suspend business, become insolvent, offer settlement to any creditors, commit any act of bankruptcy, make or send notice of any intended bankruptcy, make an assignment for the benefit of creditors, mortgage, pledge or transfer of accounts receivable, or other property, in trust or otherwise, or make any false statement or representation orally or in writing, or fail to furnish information, or fail to permit inspection of any books or records on demand of the said Bank, or fail to pay any obligation when due, or where he is or against the obligors any petition in bankruptcy proceeding under any law relating to the relief of debtors, or for the appointment of a receiver of their property, or if a warrant of attachment be issued against any of their property, or any judgment be entered against them, or if an individual, he shall die, or if a corporation, it be dissolved or its capital be impaired, or if for any other cause the Bank in its sole discretion deems this obligation in jeopardy, or any other obligation of any maker, endorser or guarantor hereof in jeopardy, or if for any other cause the protection of the said Bank in its sole discretion so requires, all liabilities of the undersigned to the said Bank, including this note, shall, upon the notice of the said Bank mature forthwith and become due and payable without demand or notice, which are hereby waived. Payee shall at all times have a lien on all property of any maker or endorser hereof, and may at any time, without notice, apply the same against payment of this note or any other obligations of such maker or endorser hereof, direct or contingent, whether due or not. Payee shall at all times have a lien on all property of any maker or endorser hereof or the proceeds thereof held or received by or for the Payee for any purpose including safekeeping, custody, transmission, collection, pledge or placed in any safe deposit box leased by Payee to any maker or endorser hereof. Upon the occurrence of any of the events above set forth Payee may sell all or part of any maker's or endorser's property at any broker's board, exchange or at a public or private sale, without any demand, notice or advertisement, all of which are hereby expressly waived, and may purchase same at such sale. If this note is signed by more than one maker they shall be jointly and severally liable. In case of default there shall be added to the amount due on this note the costs of any process including attorney's fees in the sum of 20% of the amount due for the collection thereof, which are hereby deemed reasonable.

VALUE RECEIVED DUE 2-9-76

Reduce 1/2 at maturity

Edward R. Hoot -
Edward Hogan Lakeside Drive Mahwah NJ

GOVERNMENT EXHIBIT 33

952 A

GX 5-

REQUEST NO. 11

Fourth Element - Intent to Injure or Defraud

If you should find that the defendant misapplied funds, credits or moneys of the bank, you must then consider whether the defendants acted with an intent to injure or defraud the Barclay's Bank of New York.

For each count in which the defendant is charged with misapplication of bank funds, credits or moneys, the Government must prove beyond a reasonable doubt that the defendant acted with an intent and knowledge that the bank was being placed in jeopardy of loss and with intent to injure or defraud the bank and not merely because of mistake or inadvertence or some other innocent reason.

The Government does not have to prove that the defendant's motive was to injure or defraud the bank. If the defendant's actions were in deliberate disregard of the interest of the bank and the defendant's conduct was to expose the bank to the risk of injury or fraud then the defendant can be said to have had an intent to injure or defraud the bank. Indeed, even if the defendant had the hope or belief that his actions would ultimately benefit the bank, he would have an intent to injure or defraud the bank if he deliberately disregard the necessary effect of his acts which would be to expose the bank to the risk of injury or fraud. See United States v. Giordano, 489 F.2d 327, 333 (2d Cir. 1973); United States v. Wilson, 500 F.2d

Fourth Element - Intent to Injure or Defraud

715, 720 (5th Cir. 1974); United States v. Tokoph, 514 F.2d 597, 603-04 (10th Cir. 1975); Giragosian v. United States, 349 F.2d 166 (1st Cir. 1965); Golden v. United States, 318 F.2d 357, 361 (1st Cir. 1963); Galbreath v. United States, 257 F.2d 648, 656 (6th Cir. 1918). The defendant's intent may be established by circumstantial as well as direct evidence. United States v. Giordano, 489 F.2d 327, 330 (2d Cir. 1973). Thus, in considering the defendant's intent as to any count, you should examine the facts surrounding the defendant's action.

Adapted from the charge of Judge Pollack
in United States v. Metzger, 75 Cr. 515,
1176 (Tr. 1784).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 77-1107

UNITED STATES OF AMERICA,
Appellee ~~XXXXX~~
~~Plaintiff~~
against
WILLIAM H. CLEARY and
GUSTAVO PASSARELLI,
Defendants-Appellants.
~~Defendants~~

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 335 East 22nd Street,
New York, New York.

That on June 3, 1977 deponent served the annexed Appendix
of Defendant-Appellant William H. Cleary
on Morton Berger, Esq.
attorney(s) for Defendant-Appellant Gustavo Passarelli
in this action at 13 Eastbourne Drive, Spring Valley, New York 10977
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.
Sworn to before me this 3rd day
of June, 1977.

Patricia Dennigan
Notary Public

Sylvia Diop
The name signed must be printed beneath
Sylvia Diop

PATRICIA DENNIGAN
Notary Public, State of New York
No. 24-4618654
Qualified in Kings County
Commission Expires March 30, 1979

Copy Received.
Richard Winters
AUSA
6/3/77

